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ITALIAN LEGISLATION ON THE PUNISHMENT OF FASCIST CRIMES

Description

This report is a compendium of Italian laws governing defascistization. It includes a description of the various types of crimes committed by Fascists, their punishment, the courts, the High Commissioner for Sanctions against Fascism, and the applicable rules of criminal procedure. The report also contains comments on legal questions arising under these laws, including issues of constitutionality, retroactivity, and conflicts of jurisdiction.

Washington
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ABBREVIATIONS

C.P.	Codice Penale	Penal Code
C.P.M.D.G.	Codice Penale Militare di Guerra	Penal Military War Code
C.P.M.D.P.	Codice Penale Militare di Pace	Penal Military Peace Code
C.P.P.	Codice di Procedura Penale	Code of Criminal Procedure
D.L.L.	Decreto Legislativo Luogotenenziale	Legislative Decree of the Lieutenant General of the Realm
D.P.C.M.	Decreto del Presidente del Consiglio dei Ministri	Decree of the President of Council of Ministers
C.U.	Gazzetta Ufficiale	Official Gazette in which all the Italian laws are published
L.	Legge	Law
O.G.D.	Ordinamento Giudiziario Militare	Regulation of the military judicial administration
R.D.	Regio Decreto	Royal Decree
R.D.L.	Regio Decreto-Legge	Royal Decree Law
R.P.D.	Relazione del Guardasigilli sul progetto definitivo	Report of the Minister Keeper of the Seals on the final draft

INTRODUCTION

The purpose of the present report is twofold: 1) to make a compendium of current Italian legislation on the punishment of Fascists, and 2) to explain this legislation and discuss the issues which arise thereunder.[1] Procedural rules have been treated only if they constitute a departure from the ordinary rules governing criminal procedure or when necessary to explain the changes in procedural law or the functions of the courts. The report also includes comments on the problems of retroactivity of the laws, conflicts of jurisdiction, questions of constitutionality, and right to trial by jury. Furthermore, an effort has been made to explain the principal differences between the Italian and Anglo-American systems of criminal procedure when such an explanation might lead to a clearer understanding of the practical operation of the Italian laws. The outline form of presentation was chosen because it has three advantages: 1) the subject matter is more readily understandable, 2) reference to specific laws or clauses of these laws is facilitated, and 3) additions to the text necessitated by new legislation repealing or amending existing laws treated in the present report is easier.

The operation of the intrinsically simple (although often poorly drafted and ambiguous) Italian legislation on the punishment of Fascist criminals is complex. There are fifteen types of crimes or quasi-offenses which have been grouped in this report into three categories, 1) Pre-armistice, 2) Post-armistice, and 3) Those which may be committed in the future. Twelve different courts or commissions with original or appellate jurisdiction are entrusted with the enforcement of the laws. The jurisdiction of these courts is a difficult study in itself. In some parts of Italy the courts exercise concurrent and/or exclusive jurisdiction, while in other parts other courts have the same jurisdiction. To add to the confusion, the original laws on punishment of Fascist crimes have been frequently amended and re-amended and both the Fascist and pre-Fascist legal codes

1. For an analysis of the results of the Italian defascistization campaign see OSS R & A Report No. 2688, Treatment of Former Fascists by the Italian Government.

are still in force. Finally, the political issue of defascistization complicates the problem since the major political parties in Italy, while agreeing in principle on the necessity for defascistization, can agree neither on the extent to which they wish to extirpate all traces of the regime or upon the degree of harshness which they wish to employ toward individual Fascists.[1]

Legislation for the punishment of Fascist criminals was not passed for some time after the abolition of the Fascist regime and until after a number of other laws on defascistization had been adopted because the government then in power apparently did not consider it politically expedient to deal too severely with former Fascists. The first decree on the punishment of Fascists was not adopted until 26 May 1944,[2] and no marked success in bringing Fascist criminals to justice was achieved until the Extraordinary Courts of Assizes were established in Northern Italy on 26 April 1945, partially, at least, because the ordinary tribunals were too burdened with other business and the single special court established to try Fascist criminals was unable to meet the demands made upon it. Recently this situation has been corrected by the establishment of provincial commissions throughout Italy and by the organization of the Extraordinary Courts of Assizes in Northern Italy where the political pressure for swift and thorough defascistization has been greater than in the South. These courts have been permitted to disregard many of the formalities of procedure (which were found to delay defascistization in Southern Italy) and deliver summary judgments.

1. OSS R & A Report No. 2688, cited.
2. R.D.L. 26.5.44. #134.

I. CATEGORIES OF FASCIST CRIMINALS (OR TYPES OF CRIMES AND THEIR PUNISHMENT.

Types of Fascist criminals have been grouped according to the period in which their offenses were committed. The crimes or quasi-offenses described in this report have been placed in the following categories: 1) those committed prior to the armistice (i.e., 8 September 1943), 2) those committed following the armistice, and 3) those which may be committed in the future. This somewhat burdensome classification is justified in the light of difficulties otherwise encountered in the application of the principle of non-retroactivity of the law. (Rule against ex post facto laws).

A. Crimes or Quasi-Offenses committed prior to the armistice.

1. Fascist hierarchs and high-ranking Fascist government officials.

a. Crime or class of criminals: "The members of the Fascist Government and the Fascist hierarchy guilty of having 1) annulled the constitutional guarantees, 2) destroyed popular freedoms, 3) created the Fascist regime, 4) compromised and betrayed the fate of the Nation, and 5) led up to the present catastrophe...." Art. 2. D.L.L. 27.7.44. #159.

b. Punishment: "....shall be punished with life imprisonment and in instances of greater responsibility with the death penalty." Art. 2. D.L.L. 27.7.44. #159.

c. Tribunals having jurisdiction: Cf. Ch. V: A, 1a, below p. 27.

d. Comment: These were high-ranking Fascists on the policy-making level. Note, however, that Fascist hierarchs and top-ranking Fascist government officials who collaborated with the Germans (i.e. neo-Fascist leaders) are guilty of a separate offense and are to be punished in accordance with the provisions set forth under B, below (p.35). Consequently, members of both the Fascist pre-armistice and neo-Fascist governments as well as pre-armistice and neo-Fascist hierarchs are guilty of two different crimes and are punishable accordingly.

2. Fascist organizers guilty of violence.

a. Crime or class of criminals: "1) Organizers of Fascist squads, which committed acts of violence or destruction, and 2) persons who promoted or led the insurrection of 28 October 1922...." Art. 3. D.L.L. 27.7.44. #159.

b. Punishment: "....shall be punished in accordance with Article 120 of the 1889 Penal Code." Art. 3. D.L.L. 27.7.44. #159.

c. Tribunals having jurisdiction: Cf. 1) Ch. V: A, 1b-d, p.28-29; 2) Ch. V: B, 1a, ii, (1), p. 36; 3) Ch. V: C, 1b, ii, p. 52.

d. Comment: Article 120 of the 1889 Penal Code provides that: "Whoever commits an act inciting the inhabitants of the kingdom to take up arms against the Powers of the State, shall be punished by six to fifteen years imprisonment. If the insurrection took place, whoever promoted or directed it shall be punished by imprisonment for a period of not less than eighteen years. Whoever only took part in it shall be punished by three to fifteen years imprisonment." Therefore, since the persons described under a, above (p. 2) were leaders or organizers, they are punishable with a minimum sentence of eighteen years imprisonment. According to the law, unless there are "aggravating circumstances," the maximum penalty is twenty-four years imprisonment. (Cf. Giulio Battaglini: Diritto penale (1940), p. 405) In no event, however, would this category of Fascist criminals be punished with the death penalty or life imprisonment.

3. Fascists who materially contributed to the suppression of democratic institutions and to the maintenance of the Fascist regime.

a. Crime or class of criminals: "1) Persons who promoted or led the coup d'etat of 13 January 1925 (by which the

Mussolini government seized dictatorial power) and 2) those who later materially contributed to the maintenance of the Fascist regime..." Art. 3. D.L.L. 27.7.44. #159.

b. Punishment: "....shall be punished in accordance with Article 118" of the 1889 Penal Code. Art. 3. D.L.L. 27.7.44. #159.

c. Tribunals having jurisdiction: Cf. 1) Ch. V: A, 1b-d, p.28-29 ; 2) Ch. V: B, 1a, ii, (2), p. 36 ; 3) Ch. V: C, 1b, ii, p. 52.

d. Comment: Article 118 of the 1889 Penal Code provides that: "Whoever commits an act designed to 1) obstruct the King or the Regent, wholly or in part, even temporarily, in the exercise of his sovereignty, 2) prevent the Senate or the Chamber of Deputies from exercising their duties, 3) change by violent means the constitution of the State, or the form of Government, or the line of succession to the throne - shall be punished with imprisonment for not less than twelve years," Consequently, in the absence of aggravating circumstances, persons falling within this group of Fascist criminals are punishable with twelve to twenty-four years imprisonment.

4. Fascists who (prior to the armistice) committed crimes other than those mentioned under 1-3 above.

a. Crime or class of criminals: "Whoever has committed other crimes (other than those mentioned under 1-3 above (pp. 1-3) 1) with Fascist motives, or 2) by taking advantage of the political situation created by Fascism...." Art. 3. D.L.L. 27.7.44. #159.

b. Punishment: "....shall be punished in accordance with the laws in force at the time the crime was committed." Art. 3. D.L.L. 27.7.44. #159.

c. Tribunals having jurisdiction: Cf. 1) Ch. V: A, 1b-d, p. 28-29 ; 2) Ch. V: B, 1a, ii, (3), p.36 ; 3) Ch. V: B, 2a, ii, (1), p, 44 ; 4) Ch. V: B, 3a, ii, (1), p. 47 ; 5) Ch. V: C, 1b, ii, p. 52 ; 6) Ch. V: E, 1b, p. 65.

d. Comments: 1) According to the above provisions if the crime was committed prior to 1931, it is punishable in accordance with the provisions of the 1889 Penal Code and if committed thereafter, in accordance with the 1931 Penal Code. Hence it is impossible for the punishment to have a retroactive effect.

2) This category includes Fascists who availed themselves of their political position in order to gain financial advantages by bribery or other illegal means. Note, however, that in order to be punished pursuant to the above provisions the acts of the accused must have constituted crimes, which are not to be confused with the quasi-offenses mentioned under 5 and 6 below (pp.4 and 6).

5. Persons who for Fascist motives or by taking advantage of the situation created by Fascism co mitted acts contrary to principles of rectitude or political probity.

a. Crime or class of criminals: "Persons who 1) with Fascist motives or 2) by taking advantage of the political situation created by Fascism, performed serious acts which, while not amounting to actual crimes, are contrary to principles of rectitude or political probity...." Art. 8. D.L.L. 27.7.44. #159, as amended by Art. 2. D.L.L. 4.1.45. #2, and by Art. 1. D.L.L. 26.4.45. #149.

b. Punishment: "...1) shall be deprived of the right to vote for a period not exceeding ten years or 2) shall be barred from holding public office for a period not exceeding ten years, or 3) shall be deprived of their political rights for a period not exceeding ten years." Art. 2. D.L.L. 4.1.45. #2 and Art. 1. D.L.L. 26.4.45. #149.

c. Tribunals having jurisdiction: Cf. 1) Ch. V: A, 1e, p.30; 2) Ch. V: B, 1a, ii, (4), p.37 ; 3) Ch. V: B, 2a, ii, (3), p.45 ; 4) Ch. V: B, 3a, ii, (2), p.47 ; 5) Ch. V. C, 1b, iii, p.53 ; 6) Ch. V: F, 1, p.65.

d. Comment: 1) It is further provided that: "Persons who held executive or policy-making offices in the Fascist Party shall in any event be subject to the temporary loss of the right to vote." Art. 2. D.L.L. 4.1.45. #2. and Art. 1. D.L.L. 26.4.45. #149. The above-mentioned offices have been further described as follows:

a) "Secretary and vice-secretary of the Fascist Party;

b) "Member of the Fascist Grand Council;

c) "Member of the National Directorate of the Fascist Party;

d) "Member of the National Council of the Fascist Party;

e) "Inspector of the Fascist Party;

f) "Federal Secretary and Federal Vice-Secretary;

g) "Federal Inspector;

h) "Political Secretary of a commune with a population exceeding 20,000;

i) "Office of the M.V.S.N. (Fascist militia) in permanent active service with a higher rank than centurione (equivalent to captain.)" D.P.C.M. 2.2.45

2) The fundamental principle of non-retroactivity of the law cannot apply to the provisions establishing punishments for the acts mentioned under a, above (p. 4). The canon "nullum crimen sine lege, mulla poena sine lege" is also not applicable, since the acts described under a, above (p. 4) are not considered crimes. They are acts known as quasi-offenses. The offenders mentioned under a above, (p. 4) are to be committed to penal colonies, not because they are considered guilty of having committed a

crime, but because they are considered dangerous to society. Pursuant to this theory the State may, under its police power, take precautionary measures ("misure di sicurezza") to safeguard the public welfare. It should be noted that the Italian constitution (Statuto) contains no provisions preventing this type of legislation which, in effect, punishes persons who are not guilty of having committed a criminal act. Many similar restrictive measures were created or very largely extended by the Fascist legislature. Cf. Battaglini, G.: Diritto penale (1937), pp. 377 ff.

6. Persons who conducted themselves in a manner inspired by Fascist malpractice to such an extent as to be regarded dangerous to the exercise of democratic liberties.

a. Crime or class of criminals: "Persons who during the former political regime conducted themselves in a manner inspired by the methods and malpractice ("malcostume") of Fascism to such an extent as to be regarded dangerous to the exercise of democratic liberties:..." Art. 8. D.L.L. 27.7.44. #159. as amended by Art. 3. D.L.L. 26.4.45. #149.

b. Punishment: "....may be committed, for a period of not less than one but not exceeding five years, 1) to a labor farm, or 2) to a work house, or 3, to the "confino di polizia" according to the provisions of Article 180 of the R.D. 18.6.31. #773, or 4) to concentration camps. Persons who have incurred the foregoing sanctions shall, for the duration of the sanction, lose their right to vote automatically and without the necessity of a separate judgment." Art. 8.D.L.L. 27.7.44. #159 as amended by Art. 3. D.L.L. 26.4.45. #149.

c. Tribunals having jurisdiction: Cf. 1) Ch. V: A, 1e, p.30; 2) Ch. V: B, 1a, ii, (4), p. 37; 3) Ch. V: B, 2a, ii, (3), p. 45; 4) Ch. V: B, 3a, ii, (2), p. 47; 5) Ch. V: C, 1b, iii, p. 53; 6) Ch. V: H, 1, p.70.

d. Comment: Article 180 of the R.D. 18.6.31. #773, mentioned under b 3), above (p. 6), reads as follows: "The police confinement consists of one to five years compulsory labor in a colony or a commune of the Kingdom in which the confined person is not domiciled."

B. Crimes Committed Subsequent to the Armistice.

1. Neo-Fascists who collaborated with the Germans.

a. Crime or class of criminals: "Whoever, after 8 September 1943, committed or shall commit crimes against the military defense of the State by collaborating with or assisting the German invader in any manner whatsoever...." Art. 5. D.L.L. 27.7.44. #159.

b. Punishment: "....shall be punished in accordance with the provisions of the Penal Military War Code. Punishments provided for military personnel shall also apply to civilians." Art. 5. D.L.L. 27.7.44. #159.

c. Tribunals having jurisdiction: Cf. 1) Ch. V: A, 1b-d, pp.28-29; 2) Ch. V: B, 1a, ii, (5), p. 38; 3) Ch. V: B, 2a, ii, (2), p. 44; 4) Ch. V: C, 1b, i, p. 49; 5) Ch. V: E, 1a, p. 63.

d. Comments: 1) The following provisions apply only in the event that the Extraordinary Courts of Assizes have jurisdiction and try the defendants (Cf. pp. 48ff.): "Whoever, subsequent to the establishment of the so-called Italian Social Republic, held one of the following offices or engaged in any of the following activities, shall be conclusively presumed to have collaborated with or assisted the German invader:

1) "Ministers or undersecretaries of the self-styled government of the Italian Social Republic; or executive posts of a national nature in the Republican Fascist Party;

2) "President or members of the Special Tribunal for the Defense of the State or extraordinary tribunals established by the aforementioned government, or persons who held before said courts the office of public prosecutor;

3) "Heads of provinces or secretaries or federal commissioners or other equivalent offices;

4) "Editors-in-chief of political newspapers;

5) "High ranking officers in the Blackshirt Militia with politico-military functions.

"Persons who, having held one of the above-mentioned offices, assumed greater responsibilities, and in any event, those who held the offices or carried out the functions indicated in numbers 1 and 2 of the preceding paragraph, shall be punished with penalties prescribed in Articles 51 and 54 of the Penal Military War Code; in other instances the provisions of Article 58 of the above-mentioned Code shall be applied.

"In the event that other crimes were committed, the penalties provided therefor by the Penal Military War Code shall apply." Art. 1. D.L.L. 22.4.45. #142.

2) Article 51 of the Penal Military War Code reads as follows: "A member of the armed forces who commits an act designed to favor the military operations of the enemy or to otherwise hinder the operations of the armed forces of the Italian State, shall be punished with death and degradation." Article 54 of the above-mentioned Code reads as follows: "A member of the armed forces who, in order to assist the enemy, corresponds with or furnishes information to the enemy shall be punished with death and degradation. In the event that the furnishing of information has not produced harmful effects, the penalty may be diminished. If assistance to the enemy has been offered but not accepted, the penalty shall entail imprisonment for not less than fifteen years." Article 58 of the said

Code reads as follows; "Within the territory of the State invaded or occupied by the enemy, whoever promotes the political interests of the enemy or commits an act designed to diminish the loyalty of the citizens for the Italian State, shall be punished with imprisonment ranging from ten to twenty years."

3) The penalty imposed under b above (p. 7) has a retroactive effect when applied to civilians who collaborated with the Germans prior to 27 July 1944 (i.e., the date of the passage of the above-cited decree), since prior to that date the Penal Military War Code did not apply to civilians. Although there are no provisions in the Italian Constitution (Statuto) against the passage of retroactive legislation, the practice of enacting retroactive laws is contrary to the fundamental canon "nullum crimen sine lege, nulla poena sine lege" (no crime without law, no punishment without law). In addition, Article 2 of the 1931 Penal Code expressly provides that: "No one shall be punished for an act which, in accordance with the laws in force at the time it was committed, did not constitute a crime." (Cf. Battaglini G.: Diritto penale (1937), pp. 41 ff.) With this principle in mind, eighteen anti-Fascist jurists on 10 July 1944 signed a strong manifesto which took exception to similar retroactive provisions embodied in the first anti-Fascist decree for the punishment of Fascist crimes (R.D.L. 26.5.44. #134 published in G.U. #32, 31.5.44). Nevertheless, Vincenzo Azzolini, a civilian (former Governor of the Bank of Italy), was prosecuted and sentenced to thirty years imprisonment pursuant to the provisions of the Penal Military War Code.

Cf. R & A Report No. 2688, p. 22.

C. Crimes or Quasi-Offenses which may be Committed in the Future.

1. Persons who reorganize or promote the reorganization of the of the Fascist Party.

a. Crimes or class of criminals: "Whoever 1) reorganizes the Fascist Party, in any form or under any denomination whatsoever, or 2) promotes its reorganization...." Art. 1. D.L.L. 26.4.45. #195.

b. Punishment: "....shall be punished by ten to twenty years imprisonment." Art. 1. D.L.L. 26.4.45. #195.

c. Tribunals having jurisdiction: Cf. 1) Ch. V: A, 1c, p. 28; 2) Ch. V: B, 1a, ii, (6), p.39.

d. Comment: Cf. Comment under 8, d, 2) below, p. 14.

2. Persons who participate in the reorganization or promotion of the reorganization of the Fascist Party.

a. Crime or class of criminals: "Whoever participates" in the crime mentioned under 1a, above (p. 10). Art. 1. D.L.L. 26.4.45. #195.

b. Punishment: "....shall be punished with two to ten years imprisonment." Art. 1. D.L.L. 26.4.45. #195.

c. Tribunals having jurisdiction: Cf. 1) Ch. V: A, 1c, p. 28; 2) Ch. V: B, 2a, ii, (4), p. 46.

d. Comment: Cf. Comment under 8, d, 2) below (p. 14). In the present case it is even more difficult to draw a distinction between this crime and the quasi-offense described under 8, a, 1) below (p. 13).

3. Persons who by threat or violence prevent the exercise of democratic liberties.

a. Crime or class of criminals: "Whoever engages in Fascist activity hindering or obstructing by threats or acts of violence the exercise of civil or political rights of the citizens...." Art. 2. D.L.L. 26.4.45. #195.

b. Punishment: "....shall be punished with three to twelve years imprisonment, provided that his actions do not

constitute a more serious crime." Art. 2. D.L.L. 26.4.45. #195.

c. Tribunals having jurisdiction: Cf. 1) Ch. V: A, 1c, p. 23; 2) Ch. V: B, 1a, ii, (7), p. 39.

d. Comment: Cf. Comment under 7, d, 2) below (p. 13).

4. Persons who organize armed bands for the purpose of reestablishing the Fascist Party or preventing by threats or violence the exercise of democratic liberties.

a. Crime or class of criminals: "Whoever, for the purpose of carrying on the Fascist activity described in the preceding Articles (i.e. 1a, 2a, 3a, above, p. 10), promotes, leads or subsidizes an armed band...." Art. 3. D.L.L. 26.4.45. #195.

b. Punishment: "....shall be punished, for this alone, with five to fifteen years imprisonment." Art. 3. D.L.L. 26.4.45. #195.

c. Tribunals having jurisdiction: Cf. 1) Ch. V: A, 1c, p. 23; 2) Ch. V: B, 1a, ii, (8), p. 39.

5. Leaders of armed bands who attempt to reortanize the Fascist Party or by threats or violence prevent the exercise of democratic liberties in such a manner as to provoke civil war.

a. Crime or class of criminals: "The promoters and leaders of the crime described in article 3 (i.e. 4a, above p. 11) committed jointly with one of the crimes described in articles 1 and 2 (i.e. 1a, 2a, and 3a, above p. 10), which owing to their gravity may provoke or foster civil war...." Art. 5. D.L.L. 26.4.45. #195.

b. Punishment: "....may be punished in accordance with the penalties provided for by article 2. D.L.L. 27.7.44. #159. (i.e. according to the penalty described under A, 1b, above, p. 1)." Art. 4. D.L.L. 26.4.45. #195.

c. Tribunals having jurisdiction: Cf. 1) Ch. V: A, 1c, p. 23; 2) Ch. V: B, 1a, ii, (9), p. 39.

d. Comment; Consequently, people guilty of the these crimes are punishable with death or life imprisonment.

6. Persons who by any means of propaganda incite others to the perpetration of any crime mentioned under 1-5 above.

a. Crime or class of criminals: "Whoever incites others/to the perpetration of any of the crimes described in the preceding articles (i.e., 1a, 2a, 3a, 4a, and 5a, above pp. 10-11) by disseminating printed material or false information or by means of any propaganda whatsoever...." Art. 5. D.L.L. 26.4.45. #195.

b. Punishment: "....shall be punished with two to ten years imprisonment." Art. 5. D.L.L. 26.4.45. #195.

c. Tribunals having jurisdiction: Cf. 1) Ch. V: A, 1c, p. 28; 2) Ch. V: B, 2a, ii, (5), p. 46.

d. Comment: Note that there is only a very slight difference between the type of crime described under a, above, p. 12 and the quasi-offense mentioned under 8a, 2) below, p. 13.

7. Former Fascists who conduct themselves in a manner inspired by Fascist malpractice in such a way as to endanger the exercise of democratic liberties.

a. Crime or class of criminals: "Persons who during the former political regime conducted themselves in a manner inspired by the methods and malpractice of Fascism and hereafter persevere in such conduct to such an extent as to endanger the exercise of democratic liberties...." Art. 8. D.L.L. 27.7.44. #159, as amended by Art. 3. D.L.L. 26.4.45. #149.

b. Punishment: "....may be committed, for a period of not less than one but not exceeding five years, 1) to a labor farm, 2) to a work house, 3) to police confinement (confino di polizia) according to the provisions of article 180 of R.D. 18.6.31. #773, or 4) to concentration camps. Persons who have incurred the foregoing sanctions shall, for the duration of the sanction, automatically be deprived of the

right to vote without the necessity of a separate judgment." Art. 8. D.L.L. 27.7.44. #159, as amended by Art. 4. D.L.L. 26.4.45. #149.

c. Tribunals having jursidiction: Cf. 1) Ch. V: A, 1e, p. 30; 2) Ch. V: B, 1a, ii, (4), p. 37; 3) Ch. V: B, 2a, ii, (3), p. 45; 4) Ch. V: B, 3a, ii, (2), p. 47; 5) Ch. V: C, 1b, iii, p. 36; 6) Ch. V: H, 1, p. 70.

d. Comment: 1) Article 180 of the R.D. 18.6.31 #773, mentioned under b, 4) above, (p. 12), reads as follows: "The police confinement lasts from one to five years, and takes place with compulsory labor in a colony or a commune of the Kingdom in which the confined person is not domiciled."

2) The main distinction between the crime described under 3a above, (p. 10) and the quasi-offense defined under a above (p. 12), appears to be th t in the former case the defendant must have acted in a threatening and violent manner, whereas in the latter instance punitive measures may be applied even without these aggravating circumstances. Cf. Comment under 8, d, 2) below. (p. 14).

3) Cf. Comment under A, 5d, 2) above (p. 5).

8. Persons who extol Fascism or commit acts designed to contribute to the reestablishment of the Fascist Party.

a. Crime or class of criminals: "Persons who 1) commit acts designed to contribute to the reestablishment, in any form or under any denomination whatsoever, of the suppressed Fascist Party or 2) with any oral or written manifestations publicly extol its leaders, institutions and ideologies...." Art. 3. D.L.L. 26.4.45. #149.

b. Punishment: "....may incur the same punitive measures as described under 7b, above (p. 12), "even thcugh the act does not constitute a crime." Art. 3. D.L.L. 26.4.45. #149.

c. Tribunals having jurisdiction: Cf. 1) Ch. V: A, 1c, p. 28. 2) Ch. V: H, 1, p. 70.

d. Comments: 1) The punitive measures described under 7b above (p. 12) are not mandatory, since in accordance with Italian legal practice a large discretion is vested in the magistrate as to whether or not a particular offense should be punished.

2) It is difficult to differentiate between the classes of criminals mentioned above under 1a (p. 10) and a (p. 13). Nevertheless, it is significant that when the decree was passed which made it a crime to commit acts described under 1a above (p. 10), the decree which made it a crime to commit the acts mentioned under a above (p. 12) was not repealed either specifically or generally. Both decrees were enacted on the same day, i.e. on 26 April 1945. This seems to indicate that the legislative bodies envisaged two different types of offenses. The greatest difficulty lies in making a distinction between 1a, 2) above (p. 10), which establishes a penalty for "promoting" the reorganization of the Fascist Party, and a, 1) above (p. 13) which provides for punitive measures for "acts designed to contribute to the reestablishment of the Fascist Party. It is conceivable, however, that less conclusive evidence, insufficient to find a person guilty in the former case, would, nevertheless, be held sufficient to justify the enforcement of punitive measures in the latter instance.

3) Cf. Comment under A, 5d, 2) above (p. 5).

II. EXTENUATING CIRCUMSTANCES

Former Fascists who participated in the war against the Germans or who have the benefit of the extenuating circumstances envisaged by the Penal Code of 1889 may incur milder punishments than those considered heretofore.

A. Opposition to Fascism and Participation in the Fight against the Germans.

1. "For the crimes described in" Ch. I: A, above (p. 1), "the sentences entailing the death penalty and life imprisonment may be commuted to imprisonment for not less than five years, and other punishments may be reduced by one-fourth provided the accused:

a) opposed Fascism before the beginning of the present war, or

b) actively participated in the fight against the Germans." Art. 7., 27.7.44 #159.

2. "If the accused distinguished himself by acts of valor in the fight against the Germans, he need not incur any punishment whatsoever. Art. 7., 27.7.44 #159.

B. Extenuating Circumstances as provided by the 1889 Penal Code.

"If there are extenuating circumstances as envisaged by the Penal Code of 1889, sentences imposing life imprisonment and the death penalty will be commuted to thirty years imprisonment, while other punishments will be reduced by one-sixth." Art. 7., 27.7.44 #159.

C. Comments.

1) Reduction of penalties owing to the presence of extenuating circumstances is not applicable to penalties for acts described in Ch. I: A, 5 and 6; C , 7 and 8 (pp. 4-6 and 12-13) above, since extenuating circumstances can be taken into consideration only when crimes are committed, and the acts described in Ch. I: A, 5 and 6; C, 7 and 8 are

not considered crimes, but merely "illeciti" (i.e. quasi-offenses which do not amount to real crimes).

2) Reduction of penalties for the reasons stated under A above (p. 15) does not apply to crimes committed in Ch. I: C, above (p. 10).

3) The provision concerning extenuating circumstances envisaged by the 1889 Penal Code are specifically made applicable to the penalties described in Ch. I: A and B, above (pp.1,7). It is assumed that these provisions also apply to the penalties described in Ch. I: C, above (p. 10), although the law does not expressly so provide.

III. PROVISIONS AFFECTING DEFENSES

Fascist criminals have been deprived of most "defenses" which are normally available to the accused.

A. Revocation of Pardons.

1. Provisions of the Law: "....the amnesties and pardons granted after 28 October 1922 shall not be applicable to the crimes mentioned in the present decree /i.e. to Ch. I: A and B above, pp. 1, 7/ and, if they have already been granted, shall be revoked." Art. 6., 27.7.44 #159.

2. Tribunals having jurisdiction to revoke pardons: The "declaratory judgments" conferring the amnesties and pardons mentioned above shall be revoked in chambers by the courts which originally delivered them. Decisions pronouncing the revocation of amnesties and pardons are final and not subject to review. Art. 11., D.L.L. 13.9.44 #198.

3. Comment:

a) Article 8 of the Italian Constitution ("Statuto") provides that: "The king may grant pardons and commute sentences." However, nothing is said in the Constitution about the king's right to revoke pardons and unless such rights can be inferred from the above-mentioned constitutional provision, the revocation of pardons is unconstitutional.

b) Although pardons granted to Fascist criminals have already been or will be revoked, (the King or) the Lieutenant General of the Realm may still - though this is highly unlikely - grant pardons in the future to persons convicted of Fascist crimes even in cases where the death penalty has been imposed.

B. Inapplicability of the Criminal Statute of Limitations.

1. Provisions of the Law: "The Criminal Statute of Limitations

("prescrizione") for crimes and penalties mentioned in the present decree /i.e. Ch. I: A, B, and C, 7-8 above, pp. 1,7 and 12-13/ shall not run in favor of persons guilty of these crimes who, up to the present, have escaped punishment because of the existence of the Fascist regime." Art. 6. D.L.L. 27.7.44. #159.

2. Comments:

a) Although it is realized that there is no such thing as a "criminal statute of limitations" in Anglo-American law, this term has been used because it is believed that it will be more readily understood by persons conversant with the Anglo-American system of law than another generic expression for the Italian word "prescrizione."

b) Note also that in any event the criminal statute of limitations does not apply to crimes punishable with death or life imprisonment. Cf. Art. 157 and 172 of the 1931 C. P.; Battaglini, G.: Diritto penale (1937), pp. 209 and 352.

C. Annulment of Fraudulent or Frivolous Judgments against Fascists.

1. Provisions of the Law: "The sentences imposed for these crimes /i.e. crimes committed by Fascists/ can be declared juridically non-existent when the decision was influenced by the conditions of moral coercion existing under Fascism." Art. 6. D.L.L. 27.7.44. #159.

2. Tribunal having jurisdiction to vacate judgments: Cf. Ch. V: D, 1a, ii, below, p.61.

3. Comment:

a) The sentences which are to be vacated according to the above provisions are those which were frivolously imposed against Fascists (and even then were often not executed) in an attempt to satisfy public opinion.

Cf., e.g., the spurious trial of Dumini (one of the murderers of Matteotti).

b) It is furthermore significant that R.D.L. 27.10.27. #1983 has been repealed. This decree provided that certified copies of official docket entries should not include entries of penal judgments for crimes committed before 4 November 1926 "with national motives or in connection with such motives, cases of murder excepted." Art. 1. D.L.L. 28.12.44. #429.

D. Provisions Limiting the Effect of A to C above: "the provisions of the present article /i.e. A to C above, pp.17-18/ shall not be applied to crimes punishable with a maximum imprisonment not exceeding three years." Art. 6. D.L.L. 27.7.44. #429.

E. Abrogation of Laws and Judgments passed under the neo-Fascist Regime.

1. Provisions of the Law: The following acts executed by the neo-Fascist government have no juridical significance and are absolutely void:

a) All legislative enactments passed by the neo-Fascist government;

b) All sentences passed by the Special Tribunal for the Defense of the State or by any newly-constituted courts with penal jurisdiction;

c) Sentences passed by the ordinary penal tribunals on the basis of penal legislation enacted by the so-called neo-Fascist regime. Art. 1. D.L.L. 5.10.44. #249.

2. Comments:

a) Note that sentences passed by ordinary penal tribunals on the basis of pre-neo-Fascist legislation are not affected by the above provisions. However, the provisions mentioned under C, 1, above, (p. 18) are applicable also to these sentences.

b) Since all laws enacted by the neo-Fascist government are void ab initio, there can be no defense based on the theory of non-retroactivity of the law.

F. Abolition of Prerogatives.

1. Provisions of the Law: "For the execution of the present decree /affects Ch. I: A, B, and C, 7-8, above, pp. 1, 7 and 12-13, as well as the establishment of the High Court of Justice, Ch. V: A, below, p. 27_7 all prerogatives including those described in articles 36, 37, and 47 of the Constitution (Statuto) are abolished." Art. 42. D.L.L. 27.7.44. #159.

2. Comment:

1) Articles 36, 37, and 47 of the Italian Constitution (Statuto) read as follows:

a) Art. 36: "The Senate becomes a high court of justice by royal decree to judge crimes of high treason and attempts against the State, and to judge ministers accused by the Chamber of Deputies. "In these cases the senate is not a political body. It may only concern itself with the judicial business for which it was convoked. All other acts of the Senate, in these cases, are null and void."

b) Art. 37: "Unless caught in flagrante delicto no senator can be arrested except by order of the senate. It alone is competent to judge crimes of which its members are accused."

c) Art. 47: "The Chamber of Deputies has the right to accuse ministers of the King, and to bring them before the high court of justice."

2) The provisions mentioned under 1 above, which purport to repeal certain articles of the Statuto, are clearly unconstitutional (Cf. Battaglini, G.: Diritto penale

(1937), pp.61-62). On the other hand, under the above-mentioned articles of the Italian Constitution, Fascist senators could only be tried by the Senate, a large proportion of whose members were themselves compromised by Fascism. For this reason the constitution provision for the establishment of the Senate as a high court of justice to try ministers and judge crimes of high treason was disregarded, and another high court of justice was set up for the purpose (Cf. Ch. V: A, below, p. 27). In this connection it is important to remember that the Fascist regime ignored many of the provisions of the Constitution. As a result, many of them have become obsolete or meaningless and even if some of them could now be enforced, they might have unforeseen and undesirable consequences. Many other provisions of the Constitution can not be revived and put into operating owing to changed conditions. For example, article 48 of the Constitution provides, in effect, that all laws passed by only one of the legislative chambers are null and void; if this article were enforced, all laws enacted after the dissolution of the Chamber of Deputies (in 1928) would be unconstitutional and void whereas nearly all laws passed after 1928 are considered valid and enforceable. Furthermore, it is important to point out that the Constitution is irrevocably linked with the institution of the monarchy and that it includes no provisions for amendments, stating that it is "perpetual and irrevocable." It is entirely conceivable that in view of a) the obsoleteness of fundamentally important articles of the Constitution (enacted on 4 March 1848) and b) the present state of political transformation -

with its many revoluntionary aspects - an entirely new constitution may be framed by the new legislative bodies and ratified by the people in the near future. Issues of constitionality, therefore, are not, at present, of cardinal importance.

IV. THE DEATH PENALTY AND TRIAL BY JURY

In view of the fact that many Fascist criminals will incur the death penalty, it is deemed useful to discuss the current legislation on the question of capital punishment as compared with the treatment of this problem in the Fascist and pre-Fascist laws. The right to trial by jury, a fundamental privilege of the accused in the Anglo-American system of law, has also been given consideration.

A. The Death Penalty.

1. Under the 1889 Penal Code. Under the pre-Fascist penal laws there were no provisions imposing the dealth penalty. The maximum punishment was life imprisonment. Art. 11. 1889 C.P.

2. Under the 1931 Penal Code. The Fascist legislature in 1926 introduced the death penalty. L. 25.11.26 #2068; and cf. Art. 17. 1931 Penal Code. The Fascist Penal Code of 1931 imposes the death penalty a) for crimes committed against "the safety of the State" and b) for ordinary non-political crimes which, because of their depravity and because of the absence of extenuating circumstances, tend to exclude any hope of re-educating the accused. R.P.D. pp. 68-69. So for instance Article 72 of the 1931 Penal Code provides that if the defendant commits two or more crimes, each of which is punishable by life imprisonment, he shall be punished with the death penalty. (The articles of the 1931 Penal Code which impose the death penalty are the following: 72, 241-243, 247, 253, 255, 257, 258, 261-263, 276, 280 /specifically repealed by Art. 3. D.L.L. 14.9.44. #288/, 284-287, 295, 298, 422, 438, 439 and 576.)

3. Under the Current Laws.

a. In General: In August 1944 a decree was enacted which abolished the death penalty for all crimes envisaged by the 1931 Penal Code (cf. 2, above) Art. 1. D.L.L. 10.8.44. #224. In the same decree, however, it was

specifically provided that the repeal of the death penalty was not applicable to the Penal Military Codes or to the defascistization legislation. Subsequently, the death penalty was reintroduced for crimes involving armed robbery. Art. 1. D.L.L. 10.5.45. #234.

b. The Death Penalty under the Defascistization Laws:

i. Classes of crimes for which the death penalty is not imposed: For the following categories of crimes or quasi-offenses mentioned in Ch. I, above, the penalty does not include death: A, 2, 3, 4 (if the crime was committed prior to 1931), 5 and 6, above (pp. 2-6) and C, 1-4 and 6-8, above, (pp. 10-13).

ii. Classes of crimes for which the death penalty is mandatory or discretionary: In the following categories of crimes, mentioned in Ch. I, above, the death penalty may be imposed: Ch. I: A, 1, above (p. 1): A, 4, above (p. 3), if the crime was committed after 1926 in certain instances (Art. 276, 284, and 286 of the 1931 C.P.) or after 1931 in other instances (Art. 258, 262, and 285 of the 1931 C.P.); Ch. I: B, above (p. 7); and Ch. I: C, 5, above (p. 11). Fascists who after 1926 attempted to deprive the King of his liberty are punishable with death (Art. 276, 1931 C.P.). Whoever, with Fascist motives or for purposes of reinstating Fascism in Italy after the fall of Mussolini (25 July 1943) but before 8 September 1943, collaborated with the Germans, may be punished with death in accordance with Articles 258, 262, and 284-286 of the 1931 Penal Code.

B. Trial by Jury in Criminal Cases.

1. No constitutional provisions for trial by jury: In the Italian Constitution there are no provisions whatsoever

guaranteeing a trial by jury in criminal cases.

2. Under the pre-Fascist legislation: Jury trials in certain types of criminal proceedings (i.e. in actions which came under the jurisdiction of the Courts of Assizes) were instituted in Italy by the law of 13 November 1859. Enciclopedia Italiana, Vol. XVII, p. 366; R.D. 6.12.65. #2626; L. 8.6.74. #1937. Provisions for trial by jury in criminal cases which the Court of Assizes had jurisdiction to try (very serious crimes such as murder and treason) were incorporated in the 1913 Code of Penal Procedure. The Court of Assizes was made up of a judge and ten jurors, the latter deciding only questions of facts. Art. 54 and 55, Norme di Attuazione e di Coordinamento e Disposizioni transitorie per il Codice di Procedura Penale del 1913.

3. Under the Fascist laws and the Code of Penal Procedure of 1931: In 1931 trial by jury in criminal cases was abolished. Art. 20. R.D. 23.3.31. #249; cf. Di Martino, U.: Commento al Nuovo Codice di Procedura Penale (1932), p. 651. Under the new system, in lieu of the presiding judge and jurors, two judges and five "assessors" made up the Court of Assizes. The assessors were chosen from lists of citizens belonging to "social categories" which purported to ensure "seriousness, intelligence and culture." The whole court (including the assessors) passed on both questions of fact and questions of law. Only the judges, however, could perform procedural functions (Book I, Title IV, 1931 C.P.P.). Di Martino, U.: Commento al Nuovo Codice di Procedura Penale (1932), P. 652; Enciclopedia Italiana, Vol. XI, p. 542.

4. Under the current defascistization laws: In the Courts of Assizes which try Fascist criminals popular judges have been substituted for the assessors. Their functions are very similar to those of the assessors. Cf. B, 1, b, iii, (3), below (p.41). It is important to note that persons who will be tried pursuant to the provisions set forth in Ch. I: A, 2b, 3b and 4b, above (pp. 2-3), although punishable in accordance with certain provisions of the 1889 Penal Code, will still have no right to a trial by jury, because they will be tried pursuant to the provisions of the 1931 C.P.P. and not the 1913 C.P.P. (which contains provisions for trial by jury). Art. 10. D.L.L. 27.7.44. #159.

V. THE COURTS AND COMMISSIONS ENTRUSTED WITH THE PUNISHMENT OF FASCIST CRIMINALS

The punishment of Fascist crimes is entrusted to both special and ordinary penal courts, while commissions set up in each province apply the sanctions against those accused of the so-called quasi-offenses. The jurisdiction and organization of the courts and commissions are thoroughly explained in this chapter. The procedure followed before each court or commission is discussed if it is peculiar to the particular court or commission, or if it is necessary to understand its functioning.

A. The High Court of Justice.

The High Court of Justice is an extraordinary court set up for the specific purpose of defascistization. It began to operate in mid-September 1944, a little over a month after the decree which established it was enacted. (Cf. R & A Report No. 2688, p. 21)

1. Jurisdiction.

a. Crimes described in Ch. I: A, 1, above.

i. Provisions of the law: Normally, the High Court of Justice tries persons accused of crimes described in Ch. I: A, 1, above (p. 1), for which it has original and exclusive jurisdiction. Art. 2. D.L.L. 27.7.44. #159.

ii. Comment: The establishment of this court clearly contravenes the provisions of Art. 36 of the Italian Constitution (cf. Ch. III: F, 2, comment 1), a), above p. 20), because it purports to confer jurisdiction on a new court to exercise functions which, according to the Statuto, pertain to the Senate set up as a High Court of Justice. It must be remembered, however, that the Senate is not qualified, for political reasons, to try traitors and Fascist criminals. Cf. Ch. III: F, 2, comment 2) above, (p. 20).

b. Exceptional circumstances.

i. Provisions of the law: However, "in cases of exceptional gravity, the High Commissioner is empowered to modify the provisions affecting jurisdiction, and may confer jurisdiction on the High Court of Justice to try persons other than those mentioned in Article 2 (Ch. I: A, 1a, above, p. 1) even for crimes not envisaged in the same article (Ch. I: A, 1a, above, p. 1)." Art. 41. D.L.L. 27.7.44. #159.

ii. Comment: Consequently, the High Commissioner may confer jurisdiction on the High Court to try persons guilty of any crimes incurring punishments for the enforcement of which he exercises supervisory functions. (Cf. Ch. VI: B, 2a, below, p. 76). So, for instance, in the Azzolini case (Cf. R & A Report No. 2688, p. 22) the defendant was tried by the High Court and sentenced to thirty years imprisonment for a crime which belonged to the class mentioned in Ch. I: B, above, (p. 7). Similarly, the generals Pentimalli and Del Tetto were tried by the High Court of Justice for crimes which belonged to the same class (Cf. R & A Report No. 2688, pp. 26-28, 54-55). For additional extraordinary powers conferred on the High Court of Justice, cf. c and d, below (p. 28-29).

c. Authority to disregard formality of pleading and render judgments falling under the ordinary jurisdiction of other tribunals.

i. Provisions of the law: The High Court of Justice is given authority to depart from the ordinary rules of criminal procedure and, if the facts warrant it, may disregard mistakes or omissions in the allegations of the indictment ("richiesta del decreto di citazione") and may impose the suitable - even if greater -

punishments or sanctions, even if the subject matter falls within the regular jurisdiction of other ordinary or extraordinary tribunals. Art. 5. D.L.L. 13.9.44. #198.

ii. Comment: According to these provisions the jurisdiction of the High Court is qualified. And cf. b. above (p.28) and d, below, (p.29).

d. Conflict of jurisdiction.

i. Provisions of the law: In the event that the criminal proceedings are such as to fall under both the ordinary jurisdiction of the High Court of Justice and the regular jurisdiction of other special or ordinary tribunals, the High Court of Justice has jurisdiction to try the whole subject matter. The High Court of Justice, however, for reasons of expediency, may order severance of the proceedings. In such cases, the order of the High Court is final (i.e., not subject to any kind of review). Art. 6. D.L.L. 13.9.44. #198.

ii. Comments: 1) In the above situation the jurisdiction of the High Court of Justice is similar to that exercised by the courts of equity in Anglo-American law, when they have jurisdiction to decide questions affecting the whole subject matter. Note that, also according to the above provision, the jurisdiction of the High Court of Justice is qualified.

2) Cf. also b and c, above (p. 28). The reason for the very broad jurisdiction conferred upon the High Court of Justice dates back to the time when the High Court of Justice was established and the ordinary courts were so overburdened trying ordinary criminal cases that they could not handle trials of Fascist criminals. However, after the establishment

of the Extraordinary Courts of Assizes (cf. C, below, pp. 48 ff.) and the Provincial Commissions (cf. F and H, below, p. 65 and p. 70) and the resumption of the normal functioning of the ordinary courts (cf. B, below, pp. 35 ff.), the situation appeared to have considerably improved. It is questionable, therefore, whether the High Court of Justice has since exercised this jurisdiction or will assume jurisdiction to try persons accused of crimes which fall within the regular jurisdiction of the ordinary tribunals, the Extraordinary Courts of Assizes, or the Provincial Commissions. For conflicts of jurisdiction between the High Court of Justice and the Military Tribunals, both extraordinary courts, cf. E, 1a, ii, comment 3), below, (p. 64).

e. Crimes described in Ch. I: A, 5 and 6; C, 7, above.

i. Provisions of the law: If, during the course of the trial, it should become apparent that the acts committed by the accused do not amount to real crimes but constitute one of the quasi-offenses mentioned in Ch. I: A, 5a and 6a; C, 7a, above, (pp. 4, 6, and 12), the High Court of Justice may apply the sanctions as provided in Ch. I: A, 5b and 6b; C, 7b, above, (pp. 4, 6 and 12). Art. 7. D.L.L. 13.9.44. #198.

ii. Comments: 1) Although it is likely that the above provisions were repealed by Article 2 and 8 of D.L.L. 26.4.45. #149. (cf. Comments under F, 1a, below p. 65). The High Court of Justice nevertheless has jurisdiction to try persons accused of the quasi-offenses mentioned in Ch. I: A, 5a and 6a; C, 7a, above (pp. 4, 6, and 12) pursuant to the provisions set forth under b-d, above, (pp. 28-29).

2) It is questionable, however, whether, after the Provincial Commissions, described under

F and H, below, (pp. 65 and 70) were established and began to function, the High Court of Justice continued to exercise this jurisdiction. Cf. in this connection the comment under d, ii, 2), above, (p. 29).

2. Organization.

a. Composition of the High Court of Justice and appointment of its members: The High Court of Justice comprises a president and eight members appointed by the Council of Ministers from high-ranking judges, on active service or retired, and/other outstanding persons of unassailable character. Art. 2. D.L.L. 27.7.44. #159.

b. Provisions for the appointment of substitutes: A number of substitutes - not to exceed nine - may be appointed to the High Court of Justice in order to ensure its regular functioning.

The president calls on the substitutes to sit on the bench when regular members are absent or unable to attend the trial.

In trials which are expected to last for a long time, the president may order a substitute to participate in the sessions of the court. During the trial the substitute will take the place of any permanent member of the court who is absent or unable to attend the trial. However, after the conclusion of the trial no substitution is admissible.

In case the president is absent or unable to attend the trial, the member of the court with the highest judicial rank, or the oldest member in case of equal rank, temporarily assumes the duties of the president. Art. 2. D.L.L. 13.9.44. #198.

c. Provisions concerning the separation of the High Court of Justice into two sections: If the necessity arises, the High Court of Justice may, by decree of the President of

the Council of Ministers, be divided into two sections. Nine members chosen from the regular and substitute members are assigned to each section by the decree which establishes the sections. If the High Court is divided into two sections, four substitutes may be appointed in addition to the ones mentioned above.

The president of the High Court presides over the first section; the member with the highest judicial rank or the oldest member, in the event of equal rank, presides over the second section.

The president of the High Court may substitute members of one section who are absent or unable to attend the trial with members belonging to the other section.

Art. 2. D.L.L. 13.9.44. #198.

3. Procedure.

a. Provisions concerning the preliminary stages of the trial:

It is beyond the scope of the present report to explain in detail the rules governing Italian criminal procedure. However, a concise description of some of the more fundamental distinctions between the Italian and the Anglo-American systems may prove helpful.

The Anglo-American system of indictment by a grand jury is unknown in Italian criminal practice. In lieu thereof the investigations which take place prior to the trial are handled by a magistrate in a pre-trial stage called "istruzione," which roughgly corresponds to the indictment in Anglo-American criminal procedure. The "istruzione" may be either "formal" or, in exceptional cases, "summary." In the summary type of istruzione the proceedings which precede the trial are greatly expedited. At the close of the istruzione the court passes an interlocutory judgment ordering either 1) that a trial be held (rinvio a giudizio) if on the basis of the evidence the court believes the

accused to be guilty, or 2) that the proceedings be discontinued (ordine di non doversi procedere), if it is convinced that the accused is innocent or if the evidence is insufficient to justify a trial. (The order for discontinuance is called ordine di proscioglimento). Particularly during this stage of the proceedings the attorney general ("pubblico ministero") exercises a very important function. Except in trials which come under the jurisdiction of the "pretori" (cf. B, 3, below, p. 47), the attorney general promotes the penal action in criminal courts, participates in the proceedings and promotes the execution of the orders and judgments of the court. (d'Amelio Mariano: Nuovo Digesto Italiano (1939), Vol. II, p. 242; Digesto Italiano, Vol. XV, part two, pp. 573-79).

i. Summary pre-trial proceedings: For crimes which fall within the jurisdiction of the High Court of Justice, the High Commissioner for Sanctions against Fascism (who in proceedings before the High Court of Justice assumes the functions of attorney general, cf. Ch. VI: B, 2b, below, p. 76) proceeds with the summary istruzione, in accordance with the provisions of Book II, Title III of the 1931 C.P.P. Art. 3. D.L.L. 13.9.44. #198.

ii. Time limit within which the accused must appear before the court: The time limit within which the accused must appear before the High Court of Justice may not be less than eight days except in cases envisaged by Article 183 of the 1931 C.P.P. which grants additional traveling time if the accused is not present within the commune in which the court is located. Art. 3. D.L.L. 13.9.44. #198.

iii. Provisions affecting the quashing of the proceedings: If the High Commissioner, in proceedings which fall

under the jurisdiction of the High Court of Justice, decides that there is not sufficient evidence to justify the trial, he orders the quashing of the proceedings. If, however, the proceedings have gone further and reached the stage of the summary istruzione and the High Commissioner decides that the trial should not be held, he forwards the documentary evidence to the High Court of Justice with a request that the proceedings be quashed. If the court accepts the request, it passes a judgment in chambers quashing the proceedings. Otherwise, the court returns the documentary evidence to the High Commissioner so that he may request the court to order the accused to appear. Art. 4. D.L.L. 13.9.44. #198.

b. Finality of decisions rendered by the High Court of Justice: The judgments and rulings of the High Court of Justice are final and not subject to review. Art. 9. D.L.L. 13.9.44. #198. But cf. Comment under D, 1a, i, (3), (a), (ii), below (p.60), Comment under D, 1a, i, (2), (a), (ii), below (p. 58).

c. Tort action against the accused: In criminal proceedings before the High Court of Justice "civil action" may be instituted pursuant to the provisions of Articles 22 ff. of the 1931 C.P.P. This means that persons who have been injured or have sustained damages at the hands of the accused may become a party to the criminal proceedings for the purpose of collecting damages. Art. 1. D.L.L. 5.10.44.#229.

d. Provisions concerning the clerk of the High Court of Justice: The clerical functions of the High Court of Justice are discharged by employees of the office of court clerks assigned to the High Court by executive order of the Minister of Justice. Art. 10. D.L.L. 13.9.44 #198.

B. Ordinary Criminal Courts.

The courts which, under ordinary circumstances, have jurisdiction to try or review criminal cases are the following: 1) the (ordinary) Courts of Assizes, 2) the Tribunals, 3) the Praetors, 4) the Courts of Appeals, and 5) the Supreme Court of Cassation.

1. The (ordinary) Courts of Assizes.

a. Jurisdiction.

i. In general: The (ordinary) Courts of Assizes have jurisdiction to try persons accused of crimes for which the law imposes any of the following punishments: 1) death, 2) life imprisonment, or 3) imprisonment for a) a minimum period of not less than eight years or b) a maximum period of not less than twelve years. Art. 29. 1931 C.P.P. Examples: (1) If the punishment for the crime is 12 to 16 years imprisonment, the Court of Assizes has jurisdiction because the minimum penalty exceeds 8 years and also because the maximum penalty exceeds 12 years; (2) if the punishment for the crime is 2 to 12 years imprisonment, the Court of Assizes has jurisdiction because, although the minimum penalty is less than 8 years, the maximum penalty is not less than 12 years; (3) if the punishment for the crime is 8 to 10 years imprisonment, the Court of Assizes has jurisdiction because, although the maximum penalty is less than 12 years, the minimum penalty is not less than 8 years; (4) if the punishment for the crime is 6 to 10 years imprisonment, the Court of Assizes does not have jurisdiction because not only is the maximum penalty less than 12 years but also the minimum penalty is less than 8 years. (In this last example the courts which have jurisdiction are the Tribunals; cf. B, 2a, below, p. 44).

Cf. d'Amelio Mariano: Nuovo Digesto Italiano, Vol. III, p. 470.

Comment: But note that, as a general rule, aggravating circumstances must be taken into account when determining the jurisdiction of a court. Cf. d'Amelio, Nuovo Digesto Italiano (1939), Vol. III, p. 470; Battaglini G.: Diritto penale (1937), p. 229; Art. 61, 100 and 112, 1931 C.P.P.

ii. Specific instances.

(1) Crimes described in Ch. I: A, 2, above: Since these crimes are punishable with a minimum sentence of not less than 18 years imprisonment, persons accused of such crimes are tried by the (ordinary) Courts of Assizes. Art. 4. D.L.L. 27.7.44. #159.

Comments: a) But cf. qualified jurisdiction of the Extraordinary Courts of Assizes under C, 1b, ii, below, (p. 52).

b) and cf. exceptional jurisdiction of the High Court of Justice under A, 1b-d, above, (p. 28-29).

(2) Crimes described in Ch. I: A, 3, above: Since these crimes are punishable with a minimum sentence of not less than 12 years imprisonment, persons accused of such crimes are tried by the (ordinary) Courts of Assizes. Art. 4. D.L.L. 27.7.44. #159.

Comment: Cf. Comments under 1), a) and b) above, which are also pertinent here.

(3) Crimes described in Ch. I: A, 4, above: Since jurisdiction of the ordinary criminal courts depends upon the type of the punishment, persons

guilty of the crimes mentioned in Ch. I: A, 4, above, (p. 3), may be tried by either a) the (ordinary) Courts of Assizes, b) the Tribunals, or c) the Praetors, depending upon the type of punishment imposed for each specific crime envisaged under Ch. I: A, 4, above (p. 3), at the time it was perpetrated. The (ordinary) Courts of Assizes have jurisdiction to try persons guilty of specific crimes if these crimes are punishable with any one of the penalties mentioned under i, above (p. 35). Art. 4. D.L.L. 27.7.44. #159.

Comment: Cf., however, comments under (1), a) and b) above, which are also applicable to the crimes mentioned hereunder.

(4) Quasi-offenses described in Ch. I: A, 5, 6: C, 7 above: Normally, punishments for quasi-offenses are not imposed by the courts, but by quasi-judicial commissions under the police power of the State. According to the provisions of Article 7. D.L.L. 13.9.44. #198, however, if during the trial it appears that the acts committed by the accused (although not amounting to real crimes) belong to the class of quasi-offenses described in Ch. I: A, 5, 6; C, 7, above (pp. 4, 6, and 12), both ordinary and extraordinary courts are given jurisdiction to apply the sanctions specified in Ch. I: A, 5, 6; C, 7, above (pp. 4, 6 and 12). Subsequent to the passage of the above-mentioned decree, however, another decree was passed which may have had the effect of revoking this special jurisdiction of the ordinary criminal courts. (For the jurisdiction of the High Court of Justice and the Extraordinary Courts of Assizes, cf. respectively,

A, 1e, above (p. 30) and C, 1b, iii, below (p. 53). If a conflict of jurisdiction arises, and the ordinary courts apply the above-mentioned sanctions, the accused must take an exception before judgment imposing the sanctions is passed. In such an event, the accused may, under Art. 37 and 542. 1931 C.P.P., have the case reviewed by the Supreme Court of Cassation, which, on its part, may annul the proceedings if it should hold that the ordinary courts did not have jurisdiction to handle such cases. If, on the other hand, the accused does not take an exception before judgment is passed, it is believed that the question of lack of jurisdiction may not be raised later on appeal (cf. Comments under F, 1a, 1), below, p. 65).

Cassiano Alberto: Elementi di diritto processuale penale (1933) pp. 60-85.

(5) Crimes described in Ch.I: B, above.

Persons accused of the crimes described in Ch. I: B, above, (p. 7), are tried by the ordinary Courts of Assizes, provided that:

a) the crime is normally punishable by the ordinary Courts of Assizes. Cf. i, above, (p. 35);

b) the accused is a civilian. Art. 4. D.L.L. 27.7.44. #159;

c) the crime is not punishable by the extraordinary Courts of Assizes. Cf. C, 1b, i, (1), and (2) (c) below, (p. 49 and 50);

d) the High Court of Justice is not trying the accused under its extraordinary jurisdiction in accordance with the provisions set forth under A, 1b-d, above (p. 28-29). (Cf. Azzolini trial, R & A No. 2688, p. 22).

(6) Crimes described in Ch. I: C, 1, above.

Persons accused of the crimes mentioned in Ch. I: C, 1, above (p. 10), are tried by the (ordinary) Courts of Assizes, since they are punishable with a minimum sentence of not less than ten years imprisonment and a maximum sentence of not less than twenty years imprisonment.

Comment: The ordinary Courts of Assizes have exclusive jurisdiction to punish these crimes except in extraordinary instances when the High Court of Justice may have jurisdiction to punish them.

Cf. A, 1c-d, above, (pp. 28-29).

(7) Crimes described in Ch. I: C, 3, above.

Persons guilty of the crimes mentioned in Ch, I: C, 3, above, (p. 10), are tried by the (ordinary) Courts of Assizes, since they are punishable with a maximum sentence of not less than 12 years imprisonment.

Comment: Cf. Comment under (6) above (p. 39) which is also applicable to these crimes.

(8) Crimes described in Ch. I: C, 4, above.

Persons accused of the crimes mentioned in Ch. I: C, 4, above, (p. 11), are tried by the (ordinary) Courts of Assizes, since they are punishable with a maximum sentence of not less than 15 years imprisonment.

Comment: Cf. Comment under (6) above (p. 39) which is also applicable to these crimes.

(9) Crimes described in Ch. I: C, 5, above.

Persons accused of the crimes mentioned in Ch. I: C, 5, above, (p. 11), are tried by the (ordinary) Courts of Assizes, since they are punishable either

by death or with life imprisonment.

Comment: Cf. Comment under (6), above, (p.39) which is also applicable to these crimes.

b. Organization.

i. Composition of the ordinary Courts of Assizes: The ordinary Courts of Assizes are composed of two regular judges and five popular judges. Art. 4. D.L.L. 27.7.44. #159, and Art. 1. D.L.L. 5.10.44. #209.

ii. Appointment of the regular judges: The two regular judges who sit on the Court of Assizes are:

1) The presiding judge, who is a president of a section of a Court of Appeals;

2) A second judge, who is either a) a councillor ("consigliere") of a Court of Appeals, or b) the president of a Tribunal, or c) the president of a section of a Tribunal.

The judges of the Courts of Assizes are appointed each year by decree.

Should the president of the Court of Assizes for any reason be unable to attend the trial, the first president of the Court of Appeals on the advice of the attorney general ("procuratore generale") will substitute for him another president of a section of a Court of Appeals or another regular judge of a Court of Assizes. Art. 4. D.L.L. 27.7.44. #159, as amended by Art. 1. D.L.L. 6.8.44. #170; Art. 2. R.D. 4.10.35. #1889.

iii. Appointment, qualifications, and oath of the popular judges.

(1) Appointment: The popular judges are appointed by the first president of the Court of Appeals on the advice of the attorney general ("procuratore generale") of the same court. A register of

popular judges is drawn up for each judicial district in which a Court of Assizes is established. The first president decides the number of popular judges to be listed in each register. Art. 3. D.L.L. 6.8.44. #170.

(2) Qualifications: In order to qualify as a popular judge, a person must meet the following requirements:

a) he must be an Italian citizen and enjoy full civil and political rights;

b) he must not be under thirty or over sixty-five years of age;

c) he must be a person of unassailable integrity; and

d) he must not have belonged to the Fascist Party and must never have engaged in Fascist activities. Art. 2. D.L.L. 6.8.44. #170.

(3) Oath: Article 12 of R.D. 4.10.35. #1889, which contains provisions for the oath of assessors, is repealed. (Cf. Ch. IV; B, 3 and 4, above, pp. 25-26). In lieu thereof, the popular judges, who are sworn in by the president of the Court of Assizes, take substantially the same oath that was required of jurors by Article 440 of the 1913 C.P.P. It is significant, however, that the word "sentence" has now been substituted for the word "verdict," which appeared in the oath prescribed for jurors by the 1913 C.P.P. The provisions concerning the oath are mandatory. Art. 2. D.L.L. 5.10.44. #290.

c. Procedure.

i. Rules expediting proceedings: When persons accused of Fascist crimes are tried by the Courts of Assizes, the procedure called "giudizio direttissimo" is followed

whenever possible. The giudizio direttissimo consists of a summary interrogation of the accused by the attorney general, who (if he believes that the accused should be tried) may order him brought before the court without the necessity of following the ordinary pre-trial procedure called istruzione (cf. A, 3a, above, p. ..). This expeditious proceedings, however, may only be followed 1) if the accused has been arrested by police officers without a warrant and 2) if the Court of Assizes a) is in session or b) is to be in session within five days after the arrest took place. Art. 244. and 502 of 1931 C.P.P.

If the procedure called giudizio direttissimo cannot be followed, the attorney general proceeds with the summary istruzione. Art. 4. D.L.L. 6.8.44. #170; and Art. 7. D.L.L. 26.4.45. #195.

(1) Special rules for crimes described in Ch. I: A, 2-6; B: C, 7, above: In proceedings involving crimes mentioned in Ch. I: A, 2-6; B; C, 7, above, (pp. 2-7 and 12), if the summary istruzione procedure is followed, the time limit for the accused to appear, required by Article 405 of the 1931 C.P.P., is reduced from 15 to 8 days (provided that the accused is present within the commune where the court is located; otherwise, additional traveling time is granted in accordance with Article 183 of the 1931 C.P.P.) Art. 4. D.L.L. 6.8.44. #170.

ii. Provisions for review.

(1) No appeal against judgments of (ordinary) Courts of Assizes: No appeal may be taken from the judgments rendered by the (ordinary) Courts of

Assizes. Cf. Cassiano, Alberto: Elementi di diritto processuale penale (1933), pp. 60-85.

(2) Review by the Supreme Court of Cassation;

(a) General rule: Although the judgments of the (ordinary) Courts of Assizes are not subject to appeal, they may be reviewed by the Supreme Court of Cassation by way of ricorso or revisione. Cf. D, 1a, i, (2) and (3), below, (pp. 57 and 60). When decisions imposing punishments for crimes listed in Ch. I: C, 1 and 3-5, above, (pp. 10-11) are rendered, the ordinary rules governing the review of judgments of the (ordinary) Court of Assizes are observed.

(b) Review of judgments imposed for crimes listed in Ch. I: A, 2-6; B; and C, 7, above: Judgments rendered by the (ordinary) Courts of Assizes inccases involving crimes mentioned in Ch. I: 2-6; B; and C, 7, above, (pp. 2-6, 7 and 12), are final and not reviewable, except by way of revisione. Cf. D, 1a, i, (3), below, (p.). Art. 5. D.L.L. 6.8.44. #170.

iii. The Attorney General: The Attorney General ("pubblico ministero") who handles trials before the Court of Assizes (as well as before the Supreme Court of Cassation and the Courts of Appeals) is called procuratore generale. (Cf. d'Amelio, M.: Nuovo digesto Italiano (1939), Vol. IX, p. 242).

iv. Applicability of general rules governing the procedure before the Court of Assizes: The general rules governing the procedure in the Courts of Assizes shall be observed insofar as they are consistent with the above-mentioned provisions. Art. 6. D.L.L. 6.8.44. #170.

2. The Tribunals.

a. Jurisdiction.

i. In general: The Tribunals have jurisdiction to try persons guilty of crimes which are punishable 1) neither by the Court of Assizes, 2) nor by the Praetors. Art. 30. 1931 C.P.P.

In addition, tribunals have appellate jurisdiction in sentences rendered in the first instance by the Praetors.

Comment: Therefore, the Tribunals have jurisdiction if both of the following requirements are met: 1) the minimum punishment imposed for the crime must be less than 8 years and 2) the maximum punishment imposed for the crime must be less than 12 years but must exceed 3 years.

ii. Specific instances.

(1) Crimes described in Ch. I: A, 4, above: The jurisdiction of the Tribunals depends on the type of punishment which may be imposed. Cf. 1a, ii, (3), above, (p. 36). The Tribunals have jurisdiction to try persons guilty of specific crimes if they are punishable with the penalties mentioned under i, above, (p. 44) Art. 4. D.L.L. 27.7.44. #159.

(2) Crimes described in Ch. I: B, above: It is doubtful whether any of the crimes envisaged in Ch. I: B, above, (p. 7), (which are punishable in accordance with the provisions of the Penal Military War Code), are of such a nature as to fall within the ordinary jurisdiction of the Tribunals. Whether they do or not depends on the interpretation of Article 5. D.L.L. 27.7.44. #159, which prescribes

that persons who collaborated with the Germans shall be punished in accordance with the provisions of the C.P.M.D.G. (cf. Ch. I: B, 1a-b, above p. 7). It is not clear, however, which articles of the C.P.M.D.G. were intended to apply to persons guilty of having collaborated with the Germans. If the legislature envisaged the applicability of only article 51, 54, and 58 of the C.P.M.D.G. (cf. Ch. I: B, 1d, 2), above, p. 8), then the Tribunals have no jurisdiction to try persons who collaborated with the Germans, because the punishments prescribed by these articles are more severe than those which may ordinarily be imposed by the Tribunals. If, on the other hand, it was the intention of the legislature that other articles of the C.P.M.D.G. should apply, then the Tribunals may have jurisdiction to try some of these crimes. However, even if the punishments prescribed by these other articles are such as to fall within the ordinary jurisdiction of the Tribunals, persons accused of these crimes are punishable by the Tribunals only if:

a) the accused is a civilian; and

b) the High Court of Justice is not trying the accused under its extraordinary jurisdiction in accordance with the provisions set forth under A, 1b-d, above (p. 28-29). (Cf. Azzolini trial, R & A Report No. 2688, p. 22).

For a possible conflict of jurisdiction between the Tribunal and the Extraordinary Court of Assizes, cf. C, 1b, i, (2), c), below, (p. 50).

(3) Quasi-offense described in Ch. I: A, 5-6; C, 7, above:

Cf. discussion under 1a, ii, (4) above, p. 37.

which is also pertinent here.

(4) Crimes described in Ch. I: C, 2, above: Since these crimes are punishable by 2 to 10 years imprisonment, they do not fall either under the jurisdiction of the Court of Assizes or under that of the Praetors, and are therefore punishable by the Tribunals. Cf. Comment under a, i, above, (p. 44

(5) Crimes described in Ch. I: C, 6, above: These crimes fall under the jurisdiction of the Tribunals for the reasons stated under (4), above, (p. 46).

b. Organization: The organization of the Tribunals is not modified for the trials of Fascist criminals. For organizations of the Tribunals, cf. d'Amelio, Mariano: Nuovo digesto italiano (1939) Vol. IX, p. 242.

c. Procedure: There are no special provisions for the procedure to be followed before the Tribunals in trials for Fascist criminals. For ordinary procedure, cf. 1931 C.P.P. and laws of judicial procedure ("ordinamento giudiziario"). The following facts (included in the laws governing ordinary procedure), however, are noteworthy:

i. Provisions for review: Appeals from sentences imposed by the Tribunals may be taken to the Court of Appeals. Art. 513. 1931 C.P.P. Cf. 4, below, (p. 48). Insofar as the Supreme Court of Cassation's jurisdiction to review judgments is concerned, cf. D, 1a, i, below, (p. 56).

ii. Appellate jurisdiction of the Tribunals: The Tribunals have appellate jurisdiction from sentences imposed by the Praetors. Art. 512. 1931 C.P.P. Cf. 3, below, (p.47).

iii. The Attorney General: In cases tried before the Tribunals, the Attorney General is called procuratore del Re.

3. Praetors.

a. Jurisdiction.

i. In general: Praetors have jurisdiction to try persons guilty of crimes punishable by imprisonment for a maximum period not exceeding 3 years (provisions for fines which may be imposed by the Praetors have been omitted). In some instances, however, the procuratore generale is empowered to confer on the Tribunals jurisdiction over crimes which are ordinarily triable by the Praetors. Art. 31. 1931 C.P.P.

ii. Specific instances.

(1) Crimes described in Ch. I: A. 4. above: The jurisdiction of the Praetors depends on the type of punishment which may be imposed. Cf. 1a, ii, (3), above, (p. 36). The Praetors have jurisdiction to try persons accused of specific crimes if they are punishable with the penalties mentioned under i, above, (p. 47). Art. 4. D.L.L. 27.7.44. #159.

(2) Quasi-offenses described in Ch. I: A, 5-6, C, 7, above: Cf. discussion under 1a, ii, (4), above, (p. 37), which is also pertinent here.

b. Organization: Concerning the organization of this court, cf. d'Amelio, Mariano: Nuovo Digesto Italiano (1939), Vol. IX, pp. 242 ff. This court consists of only one magistrate, i.e., the Praetor. Cf. Cassiano, A.: Elementi di Diritto Processuale Penale (1933), pp. 60-85.

c. Procedure.

i. Provisions for review: Appeals from sentences imposed by the Praetors may be taken to the Tribunals. Art. 512. 1931 C.P.P. Cf. 2c, ii, above, (p. 46). Insofar as the Supreme Court of Cassation's jurisdiction to review judgments is concerned, cf. D, 1a, i, below, (p. 56).

ii. Attorney General: In cases tried by the Praetor the functions of attorney general are performed by the Praetor himself.

4. Courts with exclusively appellate jurisdiction.

a. The Courts of Appeals: These courts have only jurisdiction to decide appeals from judgments passed by the Tribunals. Art. 513. 1931 C.P.P.

b. The Supreme Court of Cassation: For the Supreme Court of Cassation's appellate jurisdiction, cf. D, 1a, i, below, (p. 56).

C. The Extraordinary Courts of Assizes.

The Extraordinary Courts of Assizes were set up for the specific purpose of punishing neo-Fascists who collaborated with the Germans. As the name implies, they are extraordinary courts which will cease functioning as soon as they have accomplished the main purpose for which they were established.

1. Jurisdiction.

a. Limited jurisdiction.

i. Territorial and other limitations: The decree which established the Extraordinary Courts of Assizes provided that they be set up only (1) in the Italian territories which were still occupied by the Germans on 22 April 1945, and (2) in other territories which may be designated by decree of the Lieutenant General of the Realm on the advice of the President of the Council of Ministers after deliberation with the Council of Ministers. Art. 1. D.L.L. 22.4.45. #142.

ii. Limitations of time: The jurisdiction of the Extraordinary Courts of Assizes in territories which had already been returned to Italian administration at the time the decree establishing them was enacted, terminates six months after the publication of the decree

in the Gazzetta Ufficiale (i.e., on 25 October 1945). In territories which had not been liberated at the time the decree was published in the Gazzetta Ufficiale or, if liberated, had not yet been transferred to Italian administration, the jurisdiction of the Extraordinary Courts of Assizes ceases six months after the decree establishing them becomes effective pursuant to ratification by ordinance of the Allied Military Government.

Thereafter, the crimes which were formerly punishable by the Extraordinary Courts of Assizes will be punished by other courts in accordance with the ordinary rules governing jurisdiction. Art. 18 and 19. D.L.L. 22.4.45. #142.

Comment: Pursuant to the provisions mentioned under a, above, (p. 48), Extraordinary Courts of Assizes were established in the provinces of Bologna, Ravenna, and Forli by decree of the Lieutenant General of the Realm. Art. 1. D.L.L. 11.5.45. #186. The above-mentioned decree becomes effective on the day it is ratified by ordinance of the Allied Military Government. Art. 2. D.L.L. 11.5.45. #186.

b. Crimes which fall within the jurisdiction of the Extraordinary Courts of Assizes: Subject to the limitations specified in the provisions under a, i and ii, above, (p. 48) the Extraordinary Courts of Assizes have jurisdiction to try persons accused of the following crimes:

i. Crimes described in Ch. I: B, above.

(1) Provisions of the law: "The Extraordinary Courts of Assizes have jurisdiction to try persons who, after 8 September 1943, committed crimes against the military defense of the State," listed in Ch. I: B, 1a, above (p. 7). Art. 1. D.L.L.

22.4.45. #142.

(2) Comments: a) Cf. Comment in Ch. I: B, 1d, 1), above, (p. 8).

b) On the question of conflict of jurisdiction between the Extraordinary Courts of Assizes and the Military Tribunals, cf. E, 1a, ii, below (p. 63).

c) It would seem that subject to the above-mentioned limitations, the Extraordinary Courts of Assizes have at least concurrent jurisdiction to try civilians who collaborated with the Germans and who, in territories other than those mentioned under a, ii, above (p. 48) are tried by the ordinary Courts of Assizes (cf. B, 1a, ii, (5), above, p. 38).. In other words, it is likely that the ordinary Courts of Assizes have no jurisdiction to try civilians who collaborated with the Germans in the territories described under a, i, above, (p. 48). The question whether the Extraordinary Courts of Assizes have either 1) exclusive, 2) concurrent, or 3) no jurisdiction to try crimes committed by civilians who collaborated with the Germans after 8 September 1943 - which, in territories other than those mentioned under a, i, above, (p. 48) fall under the jurisdiction of the Tribunals - is a much harder one to decide. On the one hand, Article 9 of D.L.L. 22.4.45. #142 provides that the regular laws governing the ordinary Courts of Assizes shall be applied, if pertinent, to the Extraordinary Courts of Assizes; and, according to these laws, the Courts of Assizes have no

jurisdiction to try persons guilty of crimes punishable by imprisonment for a minimum period of less than 8 years and a maximum period of less than 12 years, (cf. B, 1a, i, above, p. 35). On the other hand, Art. 1. D.L.L. 22.4.45. #142 presribes that the Extraordinary Courts of Assizes shall have jurisdiction to try persons who collaborated with the Germans and does not specifically limit their jurisdiction to conform with the rule applicable to ordinary criminal courts, which provides that the jurisdiction of a court shall be governed by the type of punishment imposed by the law; on the contrary, Art. 1, D.L.L. 22.4.45. #142 expressly provides that "in the event that other crimes were committed" (i.e. crimes other than those punishable by Articles 51, 54, and 58 of the C.P.M.D.G.), the Extraordinary Courts of Assizes shall have jurisdiction to apply the penalties provided therefor by other articles of the C.P.M.D.G. (Cf. Ch. I: B, 1d, Comment 2), above, p. 8). It is, therefore, almost certain that the Extraordinary Courts of Assizes have jurisdiction to try civilians who collaborated with the Germans after 8 September 1943 for crimes which, under the provisions of the C.P.M.D.G.,,are punishable by imprisonment for a minimum period of less than 8 years and a maximum period of less than 12 years.

Should a dispute on the question of jurisdiction arise between the Extraordinary Courts of Assizes on one hand and the ordinary Courts of Assizes or the Tribunals on the other hand, it will have to be

decided by the Supreme Court of Cassation in accordance with Articles 37 and 542 of the 1931 C.P.P. Cf. D, 1a, i, (2) and (3), below (pp. 57 and 60).

d) It is very unlikely that there is a conflict of jurisdiction between the Extraordinary Courts of Assizes and the High Court of Justice; however, should a dispute arise between the two courts, the decision of the High Court of Justice on the question of jurisdiction is believed to be reviewable by way of ricorso by the Supreme Court of Cassation. Cf.D,1,a,i,(a),(ii), below, Comment 1)(p.

ii. Crimes described in Ch. I: A, 2-4, above.

(1) Provisions of the law: "The Extraordinary Courts of Assizes have jurisdiction to adjudicate the crimes described" in Ch. I: A, 2-4, above, (pp. 2-3), "committed by persons accused of the crimes mentioned in Ch. I: B, above, (p. 7). Art. 2. D.L.L. 22.4.45. #142.

(2) Comments: a) Note that the Extraordinary Courts of Assizes only have a qualified jurisdiction to try persons accused of the crimes mentioned in Ch. I: A, 2-4, above (pp. 2-3). In other words, the Extraordinary Courts of Assizes may not try persons who are accused of any or all of the crimes listed in Ch. I: A, 2-4, above (pp. 2-3), unless they are also accused of having collaborated with the Germans.

b) The Extraordinary Courts of Assizes clearly have concurrent (although qualified) jurisdiction with the ordinary Courts of Assizes. But cf. discussion on conflict of jurisdiction between Extraordinary Courts of Assizes and the Tribunals

in the comment under i, (2), c), above, (p. 50) which is also applicable to the crimes committed hereunder (i.e. under (1), above, (p. 52).

iii. Quasi-offenses described in Ch. I: A, 5-6; C, 7, above: In view of the conclusions reached in the discussion under B, 1a, ii, (4), above, (p. 37), it is questionable whether the Extraordinary Courts of Assizes have jurisdiction to impose the sanctions provided by law for the above-mentioned quasi-offenses. Cf. F, 1a, Comment 1), below, (p. 65).

2. Organization.

a. Establishment of Extraordinary Courts of Assizes and Sections of Extraordinary Courts of Assizes: Extraordinary Courts of Assizes have been or will be established in accordance with the provisions set forth under 1a, above, (p. 48) In addition, sections of Extraordinary Courts of Assizes may be established by decree of the First President of the Court of Appeals, (or, if the capital of the judicial district where the Court of Appeals is located has not yet been liberated, by the nearest First President of the Court of Appeals). Art. 3. D.L.L. 22.4.45. #142.

Comment: The rules which, as hereafter explained, are applicable to the Extraordinary Courts of Assizes also apply to the sections of the Extraordinary Courts of Assizes, unless it is expressly provided otherwise. Art. 7. D.L.L. 22.4.45. #142.

b. Composition of the Extraordinary Courts of Assizes: The Extraordinary Courts of Assizes are composed of a regular judge who presides and four popular judges. Art. 6. D.L.L. 22.4.45. #142.

c. Location of Courts: The Extraordinary Courts of Assizes are set up in the capital of the province. Sections of the above-mentioned courts, however, may be established in

localities other than the capital. Art. 3. D.L.L. 22.4.45. #142.

d. Appointment of the president and a substitute: The president of the Extraordinary Court of Assizes is appointed by the First President of the Court of Appeals of the judicial district (or, if the capital of the judicial district where the Court of Appeals is located has not yet been liberated, by the nearest First President of the Court of Appeals) from judges whose rank is not lower than that of councillor of a Court of Appeals. The appointment is made within ten days after the decree establishing the Extraordinary Courts of Assizes becomes effective. A substitute president may be appointed in the same way. Art. 6. and 8. D.L.L. 22.4.45. #142.

Comment: Persons who are related by blood or marriage in the third degree may not officiate as judge (regular or popular) or attorney general in the same Extraordinary Court of Assizes. Art. 11. D.L.L. 22.4.45. #142.

e. Appointment of popular judges: Within seven days after the decree establishing the Extraordinary Courts of Assizes goes into effect, the Committee of National Liberation of the provincial capital, after coming to an agreement with the Committees of National Liberation of other important provincial centers, must draw up a list of at least one hundred adult citizens (or one hundred and fifty if the population of the province exceeds one million) whose moral and political integrity is unassailable, and send it to the president of the Tribunal in the provincial capital.
In the course of the next seven days, the president of the Tribunal must draw up a second list of fifty (or seventy-five, if the population of the province exceeds one million) persons, choosing them from the lists compiled by the

Committees of National Liberation, after he has ascertained that they are personsoof unassailable political and moral standing.

The popular judges are then chosen by lot from the list of persons compiled by the president of the Tribunal. The oath prescribed for the popular judges of the ordinary Courts of Assizes is also mandatory for these popular judges. Cf. B, 1b, iii, (3), above, (p. 41). Art. 4, 5, 6 and 9, D.L.L. 22.4.45. #142.

f. Attorney General's office: By order of the attorney general of the Court of Appeals (or of the nearest Court of Appeals, if the capital of the judicial district where the Court of Appeals is located has not yet been liberated), an attorney general's office shall be set up with every Extraordinary Court of Assizes.

The order must be published within ten days after the decree establishing the Extraordinary Courts of Assizes becomes effective, and must specify the number and rank of magistrates assigned to the office.

Lawyers of unassailable moral and political integrity with an unimpeachable political past and of proven ability may also be chosen from the lists presented by the Committees of National Liberation to fill positions in the attorney general's office. Art. 10. D.L.L. 22.4.45. #142.

3. Procedure.

a. Rules expediting procedure.

i. When trying persons accused of crimes punishable by the Extraordinary Court of Assizes, the above-mentioned attorney general's office will proceed with the summary istruzione (cf. B, 1c, i, above, p. 41). However, if the attorney general, on the basis of the available evidence, is convinced of the guilt of the accused,

he may order that the procedure called giudizio direttissimo be followed, provided the requirements specified by law are satisfied. Art. 502. 1931 C.P.P. and Art. 14. D.L.L. 22.4.45. #142.

ii. The time limits as established in the 1931 C.P.P. for pre-trial proceedings and the trial are reduced by one-half. Art. 13. D.L.L. 22.4.45. #142.

iii. The judgments of the Extraordinary Courts of Assizes must be filed in the clerk's office within five days after they have been delivered. Art. 15. D.L.L. 22.4.45. #142.

b. Provisions for review: Ricorso to the Supreme Court of Cassation against judgments of the Extraordinary Courts of Assizes is allowed in accordance with the provisions of the 1931 C.P.P. Cf. D, 1a, i, (2) and D, 2 below, (pp.57 and 62) Art. 16. D.L.L. 22.4.45. #142.

c. Tort action against the accused: In criminal proceedings before the Extraordinary Courts of Assizes no "civil action" may be instituted. (Cf. A, 3c, above p. 34). Art. 12. D.L.L. 22.4.45. #142.

d. Applicability of general rules governing procedure of Courts of Assizes: The general rules governing the procedure in the Courts of Assizes shall be observed insofar as they are consistent with the above-mentioned provisions. Art. 9. D.L.L. 22.4.45. #142.

D. The Supreme Court of Cassation.

In penal matters the Supreme Court of Cassation is the ordinary court of last resort. Consequently, all the judgments passed by this court are final and not subject to review. Art. 552. 1931 C.P.P.

1. Ordinary penal sections of the Supreme Court of Cassation.

a. Jurisdiction.

i. Ordinary appellate jurisdiction.

(1) In general: As has been pointed out above, appeals

from judgments of the praetors may be taken to the Tribunals and from judgments of the Tribunals to the Court of Appeals, but no appeals are admissible from judgments of the Courts of Assizes or the Court of Appeals. As a general rule, on appeal, witnesses - except the accused - are not examined. the appellate court, however, may - at its discretion - order that new documents be introduced in evidence and may reexamine experts and other witnesses. Art. 518 and 520. 1931 C.P.P. On appeal, therefore, not only questions of law but also questions of fact may be reconsidered. The Supreme Court of Cassation does not hear any cases on appeal, but has jurisdiction (in the instances mentioned below) to review judgments of lower courts in two ways: a) by "ricorso" and b) by "revisione."

(2) Ricorso to the Supreme Court of Cassation: The Supreme Court of Cassation's appellate jurisdiction called ricorso roughly corresponds to the writ of error or certiorari in the Anglo-American system of law.

(a) Provisions establishing the grounds for ricorso.

(i) From judgments of ordinary criminal courts: Ricorso may be taken against sentences against which no appeal lies and against sentences rendered on appeal, if the lower court:

1) has not applied or has erroneously applied provisions of substantive criminal law;

2) has not followed mandatory (a pena di

nullita, inammissibilita o decadenza")
rules of criminal procedure; or
3) has exceeded its jurisdiction.

The ricorso, however, does not lie 1) for grounds not allowed by law or 2) for permissible grounds which are manifestly not supported by the evidence. Art. 524. 1931 C.P.P.

Comment: Under the above-mentioned circumstances, the ricorso may be taken against the judgments of all ordinary courts, i.e. against the sentences of the (ordinary) Courts of Assizes, the Courts of Appeals, the Tribunals, and the Praetors. Cf. Art. 543 and 544. 1931 C.P.P. But cf. B, 1c, ii, (2), (b), above, (p. 43).

(ii) From judgments of extraordinary criminal courts: Ricorso does not lie against judgments of the Senate set up as High Court of Justice (cf. Ch. III: F, 2, above, p. 20), but does lie against sentences of all other special courts for the grounds stated under (i), above, (p. 57), provided 1) that the sentences may not be reviewed in another manner and 2) that the law does not expressly state that the sentences are not subject to any kind of review. Art. 528. 1931 C.P.P.

Comments: 1) Ricorso from judgments of the High Court of Justice: It is questionable whether the High Court of Justice established by D.L.L. 27.7.44. #159 does, from a legal standpoint, take the

place of the Senate set up as a High Court of Justice. In any event, judgments rendered by the High Court of Justice may not be reviewed by way of ricorso except in cases of lack of jurisdiction (cf. Risorgimento Liberale, 8 July 1945), because the law expressly states that they are final and not subject to review. Cf.A, 3b, above, (p. 34).

2) Ricorso from judgments of the Extraordinary Courts of Assizes:

Ricorso may be taken against judgments of the Extraordinary Courts of Assizes. Cf.C, 3b, above, (p. 56).

3) Ricorso from judgments of the Military Tribunals:

Unless the law specifically states otherwise, ricorso may be taken against the judgments of the Military Tribunals. Cf. B, 3, below, (p. 65).

(b) Effect of the ricorso: If the ricorso is allowed, the Supreme Courts of Cassation may either:

(i) Rectify the errors of the lower court without annulling the judgment: Art. 538. 1931 C.P.P. This method of procedure will be adopted when the errors of the lower court did not materially prejudice the rights of the accused. The rectification made by the Supreme Court of Cassation may impose a punishment more favorable to the accused than the one imposed by the sentence of the lower court.

(ii) Annul the judgment without remanding it to the lower court: Art. 539 and 540.1931 C.P.P. The most important instances in which this procedure is adopted are the

following:

1) where the acts committed by the accused do not amount to a crime, 2) where the punishment for the crime does not fall within the jurisdiction of the ordinary or special courts which rendered the judgment, and 3) where the punishment imposed by the judgment is not allowed by law.

(iii) Annul the judgment and remand it for a new trial: Art. 543 and 544. 1931 C.P.P.

(iv) Partially annul the judgment of the lower court: Art. 545. 1931 C.P.P.

(3) Revisione by the Supreme Court of Cassation.

(a) Provisions establishing the grounds for review: The extraordinary remedy called revisione is granted by the Supreme Court of Cassation against final judgments rendered by the ordinary criminal courts of original or appellate jurisdiction in the following instances:

(i) Mistake: when new evidence, discovered after the judgment has been rendered, clearly establishes that the crime was not committed or that the convict did not commit the crime.

(ii) Fraud: when it is proved that the judgment of the lower court was obtained by fraud. Art. 553, and 561, 1931 C.P.P.

Comment: According to the above-mentioned articles, therefore, in cases of fraud or mistake the judgments of the ordinary Courts of Assizes, the Tribunals, and the Praetors may be reviewed by way of revisione. It seems clear, however, that neither the judgments of the High Court of Justice

nor those of the Military Tribunals may be attacked by way of revisione. It is believed also that the judgment of the Extraordinary Courts of Assizes are not subject to review by way of revisione.

(b) Effect of the revisione: The Supreme Court of Cassation may either reject the petition for revisione or may allow it and annul the judgment with or without remanding it to the lower court. Art. 558 and 561. 1931 C.P.P.

ii. Original jurisdiction and extraordinary appellate jurisdiction.

(1) Original jurisdiction to vacate fraudulent judgments mentioned in Ch. III: C, 1, above: One of the two regular penal sections of the Supreme Court of Cassation designated by the Minister Keeper of the Seals (Ministro Guardasigilli) is entrusted with the passage of "declaratory judgments" pronouncing the juridical inexistence of sentences mentioned under Ch. III: C, 1, above (p. 18). Art. 6. D.L.L. 27.7.44. #159.

(2) Extraordinary appellate jurisdiction: After 13 September 1944 one of the penal sections of the Supreme Court of Cassation had appellate jurisdiction in cases involving quasi-offenses described in Ch. I: A, 5-6; C, 7, above (pp. 4-6 and 12), even on questions of fact, provided that the original judgment was passed either by 1) a Praetor or 2) one of the provincial commissions mentioned under F and H, below (pp. 65 and 70). Art. 7 and 13. D.L.L. 13.9.44. #198. Subsequently, however, the provisions conferring this special appellate jurisdiction on the section of the Supreme Court

Cassation appear to have been repealed. Art. 2 and 8, D.L.L. 26.4.45. #149.

b. Organization: The ordinary organization of the Supreme Court of Cassation is not modified for cases involving the punishment of Fascist criminals.

c. Procedure: There is no deviation from the ordinary rules for procedure in cases involving the punishment of Fascist criminals.

2. Special provisional penal sections of the Supreme Court of Cassation.

a. Jurisdiction: This special section of the Supreme Court of Cassation has been specifically established for the purpose of allowing ricorso from the decisions of the extraordinary Courts of Assizes. Cf. C, 3b, above, (p. 56). Art. 16. D.L.L. 22.4.45. #142.

Comment: However, the jurisdiction of the above-mentioned special provisional section of the Supreme Court of Cassation ceases to exist simultaneously with the dissolution of the Extraordinary Courts of Assizes. Cf. C, 1a, ii, above, (p. 48).

b. Organization: The special provisional section of the Court of Cassation is established by decree of the Minister of Justice. This section is composed of five members. In connection with the sessions of this section the normal rules of venue are suspended. Art. 16. D.L.L. 22.4.45. #142.

c. Procedure.

i. Provisions concerning the ricorso by the persons adjudged guilty: The grounds for the ricorso to the Court of Cassation must be filed, under penalty of inadmissibility, within three days after the sentence has been filed with the clerk of the Extraordinary Court of Assizes. Art. 17. D.L.L. 22.4.45. #142.

ii. Provisions affecting ricorso by the State: The time limit allowed for ricorso by the Attorney General is

reduced to five days. Art. 17. D.L.L. 22.4.45. #142.

iii. Provisions concerning review of sentences imposing the death penalty: When the Supreme Court of Cassation is asked to review sentences imposing the death penalty, it must render a decision within ten days after receipt of the transcripts (atti). The transcripts should be forwarded immediately and under no circumstances later than the day after the grounds for the ricorso have been filed. Art. 17. D.L.L. 22.4.45. #142.

E. Military Tribunals.

1. Jurisdiction: Military courts have (or had) jurisdiction to try the following crimes:

a. Crimes described in Ch. I: B, above.

i. Provisions of the law: Members of the armed forces who are guilty of the crimes mentioned in Ch. I: B, above, (p. 7), (collaboration with the Germans after the armistice), shall be tried by Military Tribunals. Art. 5. D.L.L. 27.7.44. #159.

ii. Comments: 1) It is not believed that the termination of the state of war in Europe will affect the jurisdiction of the Military Tribunals.

2) Conflict of jurisdiction between the Military Tribunals and the Extraordinary Courts of Assizes: There can be no question that, prior to the establishment of the Extraordinary Courts of Assizes (on 22 April 1945), the Military Tribunals had jurisdiction to try members of the armed forces who collaborated with the Germans after 8 September 1943. It is not clear, however, if, after the Extraordinary Courts of Assizes were established and in the provinces in which the Extraordinary Courts of Assizes have jurisdiction, a) the Military Tribunals, b) the Extraordinary Courts of Assizes, or

3) both of these courts, have jurisdiction to try members of the armed forces who collaborated with the Germans. Cf. C, 1b, i, above, (p. 49). If a dispute should arise between the two courts, the question of jurisdiction will be decided by the Supreme Court of Cassation by way of ricorso pursuant to the provisions of Art. 37 and 542, 1931 C.P.P. Cf. D, 1a, i, (2), (a), (ii), above (p. 58).

Furthermore, it is not clear what is meant by "members of the armed forces." It is assumed, however, that the legislature intended that only persons who were on duty in the regular army, navy, or air force were to be included as "members of the armed forces." If this assumption is correct, members of the Fascist militia or the Fascist army will not be tried by the Military Tribunals but either 1) by the Extraordinary Courts of Assizes, or 2) by the ordinary penal courts, according to their respective jurisdiction. Cf. C, 1b, i, above, (p. 49), and B, 1a, ii, (5), above, (p. 38).

3) Conflict of jurisdiction between the Military Tribunals and the High Court of Justice: Clearly, the High Court of Justice and the Military Tribunals have concurrent jurisdiction to try members of the armed forces who collaborated with the Germans, However, a dispute may arise as to which court is to exercise jurisdiction. (This issue actually arose when the generals Pentimalli and Del Tetto requested that they be tried by the Military Tribunals rather than by the High Court of Justice; cf. R & A Report No. 2688, pp. 26-28 and 54-55). If the High Court of Justice is the first to assume jurisdiction its decision is believed to be final because not subject to review. (Cf. A, 3b, above, p. 34).

If, on the other hand, the Military Tribunals are the first to assume jurisdiction and the accused or the prosecutor demands that the trial be held by the High Court of Justice, the problem of conflict of jurisdiction will probably be decided by the Supreme Court of Cassation. Cf. D, 1a, i, (2), (a), (ii), above (p. 58).

b. Crimes described in Ch. I: A, 4, above: Military Tribunals no longer have jurisdiction to try crimes described in Ch. I: A, 4, above (p. 3). Prior to the conclusion of the state of war in Europe, however, Military Tribunals had jurisdiction to try all persons guilty of crimes committed against "the personality of the State" (cf. 1931 C.P.P. Book II, Title I, Articles 258, 262, and 284 to 286). Art. 1. R.D.L. 20.1.44. #45.

2. Organization: Regular organization of the Military Tribunals. Cf. Ordinamento Giudiziario Militare, approved by R.D. 9.9.41. #1022 (supplement to G.U. 27.9.41 #229).

3. Procedure: As regularly provided by the C.P.M.D.P. and C.P.M.D.G.

F. Provincial Commissions (First Class).

1. Jurisdiction: The Provincial Commissions mentioned under 2, below, have jurisdiction to apply the sanctions provided for the quasi-offenses described in Ch. I: A, 5a, above (p. 4). Art. 8. D.L.L. 27.7.44. #159 as amended by Art. 2. D.L.L. 26.4.45. #149.

a. Comments: 1) There are some very complex questions of jurisdiction concerning the quasi-offenses. Although there is no question that the Provincial Commissions have jurisdiction to impose the proper sanctions provided by law, it is not at all clear whether, with the possible exception of the High Court of Justice, other courts such as the Courts of Assizes, Extraordinary Courts of Assizes

Tribunals, or Praetors have concurrent jurisdiction to apply these sanctions. Article 7. D.L.L. 13.9.44. #198 provides that the High Court of Justice, as well as ordinary and special tribunals, may apply the sanctions mentioned in Ch. I: A, 5b and 6b; C, 7b, above, (pp. 4, 6, and 12), if during the trial it appears that the acts of the defendant, while not amounting to a real crime, constitutes one of the quasi-offenses described in Ch. I: A, 5a and 6a; C, 7a, above (pp. 4, 6, and 12). According to the provisions of a subsequent decree, i.e. Articles 2 and 8 of D.L.L. 26.4.45. #149, however, it is expressly stated that a) the provincial Commissions shall have jurisdiction to apply the sanctions provided in Ch. I: A, 5b and 6b; C, 7b, above (pp. 4, 6, and 12) for the quasi-offenses described in Ch. I: A, 5a and 6a; C, 7a, above (pp. 4,6,and 12) and b) every provision contrary to or in any way inconsistent with the provisions of the second decree are repealed. The question is whether these provisions of D.L.L. 26.4.45. #149, taken as a whole, have the effect of repealing the concurrent jurisdiction conferred by D.L.L. 13.9.44. #198 on ordinary and special tribunals. If a dispute should arise between the ordinary penal courts or the Extraordinary Courts of Assizes and the Provincial Commissions, the competent tribunal to decide this question of law would be the Supreme Court of Cassation. Cf. B, 1a, ii, (4), above, (p. 37); C, 1b, iii, above, (p. 53); and D, 1a, above, (p. 56). Art. 37 and 542, 1931 C.P.P.

2) It would appear, however, that the High Court of Justice under the provisions mentioned under A, 1c, and d, above (pp. 28-29), has concurrent (though qualified) jurisdiction with the Provincial Commissions to try persons accused of the above-mentioned quasi-offenses

even if the provisions under A, 1e, above (p. 30) should be considered to have been repealed by the above-mentioned decree. If the High Court of Justice should assume jurisdiction in these cases, which is very unlikely (cf. Comment 2) under A, 1d, ii, above p. 29), its decisions would be final.

2. Organization.

a. Composition of the Provincial Commissions (First Class): The Provincial Commissions are composed of a presiding judge and two popular judges. Art. 8. D.L.L. 27.7.44. #159 as amended by Art. 12. D.L.L. 13.9.44. #198; Art. 3. D.L.L. 4.1.45. #2; Art. 2. D.L.L. 26.4.45. #149.

b. Appointment of the Presiding Judge: The presiding magistrate of the Provincial Commissions mentioned above is appointed by the President of the Council of Ministers on the advice of the Minister of Justice and the High Commissioner for Sanctions against Fascism. Art. 12. D.L.L. 13.9.44. #198 as amended by Art. 3. D.L.L. 4.1.45. #2.

c. Appointment of popular judges: The two popular judges, mentioned above, are chosen by lot by the First President of the Court of Appeals from a list of citizens whose political and moral standing is irreproachable. The provisions mentioned under B, 1b, iii, above, (p. 40), are also applicable here. Art. 8. D.L.L. 27.7.44. #159, as amended by Art. 12. D.L.L. 13.9.44. #198 and Art. 2. D.L.L. 26.4.45. #149.

3. Procedure:

a. Provisions affecting venue: The sanctions provided for by the law must be applied by the Commission of the province in the circumscription of which the accused resides or is domiciled, and in the event that the accused resides or is domiciled outside the Kingdom, the venue is determined by

the last known residence or domicile within the Kingdom. Art. 13. D.L.L. 13.9.44. #198 as amended by Art. 2. D.L.L. 26.4.45. #149.

b. Provisions affecting the initial stage of the proceedings: The Provincial Commissions may act on their own motion or pursuant to denouncements made by 1) the High Commissioner for Sanctions against Fascism, or his delegates, or 2) the organs of public security (including also the "procuratore del Regno"), and also on information furnished by the Committees of National Liberation. Art. 13. D.L.L. 13.9.44. #198 as amended by Art. 5. D.L.L. 26.4.45. #149.

c. Provisions concerning arrest of accused and time limit within which Provincial Commissions must render their decisions: The immediate arrest of persons denounced to the Provincial Commissions for the imposition of sanctions described in Ch. I: A, 5b, above (p. 4), may be ordered by:

1) the Provincial Commissions themselves;

2) the High Commissioner for Sanctions against Fascism;

3) the Procuratore del Regno (attorney general attached to the Tribunal); or

4) the questori (provincial police chiefs).

The notice of arrest shall be communicated within three days to the appropriate Provincial Commission, which must render a decision within twenty days thereafter. Art. 5. D.L.L. 26.4.45. #149.

d. Provisions for the protection of the accused: Before the Commission may impose the sanctions provided in Ch. I; A, 5b, above (p. 4), it must grant a hearing to the accused or give him notice to appear before it. The accused may be assisted by counsel. Art. 13. D.L.L. 13.9.44. #198 and Art. 2. D.L.L. 26.4.45. #149.

e. Provisions for appeal from the decisions of the Provincial Commissions: Appeals from the decisions of the above-mentioned Provincial Commissions may be taken to the

Central Commission described under G, below, (p. 69)

Art. 2. D.L.L. 26.4.45. #149.

f. Time limit for the enforcement of sanctions described in Ch. I: A, 5b, above: The sanctions provided for in Ch. I: A, 5b, above (p. 4) cannot be imposed later than one year after D.L.L. 26.4.45. #149 went into effect (i.e., not later than 29 April 1946). Art. 6. D.L.L. 26.4.45. #149.

g. Provisions concerning the clerk of the Provincial Commissions: Secretarial duties are discharged by functionaries of the Judicial Clerk's offices, appointed by the First President of the Court of Appeals (or if no Court of Appeals is situated in the commune, by the president of the local Tribunal) which is situated in the capital commune of the province in which the Provincial Commission is established. Art. 12. D.L.L. 13.9.44 #198.

G. Central Commission.

1. Jurisdiction: The Central Commission has jurisdiction to review decisions of the Provincial Commissions mentioned under F, above, (p. 65). Art. 2. D.L.L. 26.4.45. #149.

2. Organization: The Central Commission is composed of a presiding magistrate (with a rank not lower than the fourth) and four additional members. The judge and the other members of the Central Commission are appointed by the President of the Council of Ministers on the advice of the Minister of Justice and the High Commissioner for Sanctions against Fascism. Art. 3. D.L.L. 4.1.45. #3 and Art. 2. D.L.L. 26.4.45. #149.

3. Procedure.

   a. Appeals to the Central Commission must be taken within 5 days after notice of the decision of the Provincial Commission has been communicated to the accused. Art. 3. D.L.L. 26.4.45. #149.

   b. The appeal does not have the effect of staying the execution of the Provincial Commission's decision. Art. 2.

D.L.L. 26.4.45. #149.

c. The rulings of the Central Commission are final and not subject to review. Art. 2. D.L.L. 26.4.45. #149.

Comment: It is seriously questioned whether the decisions of the Central Commission may be reviewed by the Supreme Court of Cassation. Cf. D, 1, a, i, (2) and (3), above (pp. 56 and 60).

H. Provincial Commissions (Second Class).

1. Jurisdiction: The Provincial Commissions mentioned below have jurisdiction to apply the sanctions provided for the quasi-offenses described in Ch. I: A, 6; C, 7-8, above, (pp. 6, 12 and 13). Art. 8. D.L.L. 27.7.44. #159 as amended by Art. 3. and 8. D.L.L. 26.4.45. #149.

Comment: Insofar as the quasi-offenses mentioned in Ch. I: A, 6; and C, 7 (pp. 6 and 12) are concerned, cf. discussion of conflict of jurisdiction under F, 1, a, above (p. 65). No such problem arises for the quasi-offenses described in Ch. I: C, 8, above, (p. 13).

2. Organization: The Provincial Commissions which apply the sanctions described in Ch. I: A, 6 and C, 7-8, above (pp. 6, 12 and 13) are composed of the following members:

1) The prefect of the province;

2) the procuratore del Re (i.e. the attorney general of the Tribunal);

3) a judge appointed by the president of the Tribunal;

4) the questore (i.e. the provincial police chief);

5) the commanding officer of the carabinieri (state police) in the province; and

6) a citizen of irreproachable integrity appointed by the mayor of the commune which is the capital of the province.

The Commission is convoked and presided over by the prefect or by the vice prefect if the prefect is for any reason unable to attend.

A civil employee appointed by the prefect acts as secretary, The decisions of the Commission are reached by majority vote. In case of a tie, the vote cast by the president is decisive. Art. 3. D.L.L. 26.4.45. #149; Art. 166 R.D. 18.6.31. #773 as amended by Art. 2. D.L.L. 10.12.44. #419.

3. Procedure.

a. Provisions affecting initial stages of the proceedings: The Provincial Commissions may act on their own motion or pursuant to denouncements made by 1) the High Commissioner for Sanctions against Fascism or his delegates, or 2) the organs of "public security" (i.e. attorneys-general, police chiefs), and also on information furnished by the Committees of National Liberation. Art. 13. D.L.L. 13.9.44. #198 as amended by Art. 5. D.L.L. 26.4.45. #149.

b. Provisions for the immediate arrest of the accused without service of process. The immediate arrest of persons denounced to the Provincial Commissions for the imposition of sanctions mentioned in Ch. I: A, 6b and C, 7b, 8b, above (pp. 6, 12 and 13), may only be ordered by:

1) the Provincial Commissions themselves;

2) the High Commissioner for Sanctions against Fascism;

3) the attorneys-general of the Kingdom; or

4) the provincial police chiefs (questori).

The notice of arrest must be communicated within 3 days to the appropriate provincial Commission, which must render a decision within 20 days thereafter. Art. 5. D.L.L. 26.4.45. #149.

c. Service of process on the accused with order to appear before the Commission: Within 5 days after having received notice of the denouncement the Provincial Commission must serve the accused with an order to appear

before it and present his defense.

The order to appear before the Provincial Commission shall contain a concise statement of the grounds on which the denouncement is based.

The time limit within which the accused must appear shall not be less than 3 or more than 10 days after the date the order was served. Art. 167 and 168, R.D. 18.6.3. #773; Art. 3. D.L.L. 26.4.45. #149.

d. Enforcement of the order to appear before the Provincial Commission: If the accused does not appear on the date and hour specified in the order and does not justify his failure to appear, the Provihcial Commission, after having ascertaine that the accused was properly notified, shall order the sheriff to bring the accused before it. Art. 168. R.D. 18.6.31. #773 as amended by Art. 3. D.L.L. 10.12.44. #419; Art. 3. D.L.L. 26.4.45. #149.

e. Judgment by default: If the sheriff is unable to carry out the above-mentioned order because he cannot find the accused, the Provincial Commission may render a decision if it believes that there is sufficient evidence to justify it. Art. 168. R.D. 18.6.31. #773 as amended by Art. 3. D.L.L. 10.12.44. #419; Art. 3. D.L L. 26.4.45. #149.

f. Provisions for the protection of the accused: If the accused has appeared before the Commission, he may be assisted by counsel. Art. 169. R.D. 18.6.31. #773 as amended by Art. 4. D.L.L. 10.12.44. #419; Art. 3. D.L L. 26.4.45. #149.

g. Trial and judgment: If the accused denies the truth of the allegations in the denouncement, he may introduce evidence to prove his innocence.

The Provincial Commission renders its decision after it has examined the accused and considered the evidence and the conclusions of the defense. Art. 169. R.D. 18.6.31. #773 as amended by Art. 4. D.L.L. 10.12.44. #119; Art. 3. D.L.L.

26.4.45. #149.

h. Provisions for review: The rulings of the Provincial Commission may be reviewed by the Commission of Appeals mentioned under I, below, (p. 73), only if the Provincial Commission 1) lacked jurisdiction or 2) failed to apply or erroneously applied the provisions of the law. Art. 169 R.D. 18.6.31. #773 as amended by Art. 4. D.L.L 10.12.44. #419; Art. 3. D.L.L. 26.4.45. #149.

i. Provisions governing the establishment of concentration camps: The regulations governing the organization of the concentration camps mentioned in Ch. I: A, 6, b, 4) and C, 7. b. 4), above (pp. 6 and 12) will be issued by decree of the Minister of the Interior in agreement with the Minister of the Treasury. Art. 7. D.L.L. 26.4.45. #149.

j. Time limit for enforcement of sanctions: The sanctions provided for in Ch. I, A, 6, b and C, 7, b, , above (pp.6 and 12) cannot be imposed later than one year after D.L.L. 26.4.45. #149 went into effect (i.e. not later than 26 April 1946). Art. 6. D.L.L. 26.4.45. #149.

I. Commission of Appeals.

1. Jurisdiction: The Commission of Appeals has jurisdiction to review the ordinances issued by the Provincial Commissions mentioned under H, above, (p. 70). Art. 169 and 184. R.D. 18.6.31. #773 as amended by Art. 2 and 4. D.L.L. 10.12.44. #419; Art. 3. D.L.L. 26.4.45. #149.

2. Organization.

a. Composition of the Commission of Appeals: The Commission of Appeals is composed of the following members:

1) The Undersecretary of the Ministry of the Interior, who presides;

2) The chief of police (not further identified);

3) The attorney-general (avvocato generale) assigned to a Court of Appeals;

4) A president of the Court of Appeals or a councilor of the Supreme Court of Cassation, appointed by the Minister of Justice;

5) An officer of the carabinieri with the rank of general, appointed by the chief of staff of the carabinieri; and

6) A citizen of known integrity registered in the lists of the popular judges and appointed by the Minister of Justice.

An employee of the central office of public safety performs the secretarial duties. Art. 184. R.D. 18.6.31. #773 as amended by Art. 2. D.L.L. 26.4.45. #149.

b. Location: The Commission of Appeals is established within the Ministry of the Interior. Art. 184. R.D. 18.6.31. #773 as amended by Art. 2. D.L.L. 10.12.44. #149.

3. Procedure.

a. Meetings: The meetings of the Commission are convoked by the president.

b. Legal assistance: The appellant may be represented by counsel.

c. Decisions: Decisions of the Commission of Appeals are reached by majority vote. In case of a tie, the vote cast by the president is decisive.

d. Effect: The ricorso does not stay the execution of the ordinance.

e. Execution: The decisions of the Commission of Appeals are communicated to the Ministry of the Interior for execution. Art. 184. R.D. 18.6.31. #773 as amended by Art. 2. D.L.L. 26.4.45. #149.

VI. OFFICE OF THE HIGH COMMISSIONER FOR SANCTIONS AGAINST FASCISM

A. In General.

1. Functions of the Office of the High Commissioner: The functions of the Office of the High Commissioner are two-fold: a) supervision of all organs entrusted with the enforcement of sanctions against Fascism (i.e., punishment of crimes or quasi-offenses described in Ch. I: A, B, and C, 7, above, pp.1,7,12), and b) exercise of the duties of attorney general in certain specified instances. Art. 41. D.L.L. 27.7.44. #159.

2. Composition of the Office of the High Commissioner: The Office of the High Commissioner for Sanctions against Fascism is composed of a High Commissioner, four Assistant High Commissioners, and four Assistant vice High Commissioners (for each of the four branches of defascistization, only one of which deals with the punishment of Fascist criminals), and various other functionaries. Art. 40. D.L.L. 27.7.44. #159 as amended by Art. 1, 2, 3, and 5. D.L.L. 3.10.44. #238 and by Art. 1. D.L.L. 4.1.45. #2.

B. The High Commissioner for Sanctions against Fascism.

1. Appointment: The High Commissioner for Sanctions against Fascism is appointed "after deliberation" of the Council of Ministers. Art. 40. D.L.L. 27.7.44. #159 as amended by Art. 1. D.L.L. 4.1.45. #2.

Comment: It is not clear who actually appoints the High Commissioner. According to article 11 of R.D.L. 26.5.44. #134, which was subsequently repealed (by article 46. D.L.L. 27.7.44. #159), the High Commissioner for the punishment of Fascist crimes was appointed by royal decree on the advice of the President of the Council of Ministers. The

present law does not state, however, whether or not the High Commissioner is to be appointed by decree of the Lieutenant General.

2. Functions: As has been pointed out above, the High Commissioner has a dual capacity, that of supervising the enforcement of sanctions against Fascism, and, in certain instances, that of attorney general.

a. Supervision of sanctions against Fascism: The High Commissioner directs and supervises the work of all organs which impose sanctions against Fascism. Art. 41. D.L.L. 27.7.44. #159. Consequently, the High Commissioner may promote the action for the punishment of all crimes or quasi-offenses described in Ch. I: A, B, and C, 7-8, above, (pp.1,7,12). Art. 41. D.L.L. 27.7.44. #159 as amended by Art. 3. D.L.L. 3.5.45. #196.

b. The High Commissioner, the sole attorney general in proceedings before the High Court of Justice:

i. General rule: The High Commissioner alone exercises the functions of attorney general for the crimes mentioned in Ch. I: A, 1, above (p. 1), which come under the jurisdiction of the High Court of Justice. Cf. Ch. V: A, 1, a, above (p. 27). Art. 41. D.L.L. 27.7.44. #159.

ii. Exceptional circumstances: The High Commissioner may, under exceptional circumstances, confer jurisdiction on the High Court of Justice to try persons guilty of the crimes or quasi-offenses described in Ch. I: A, B, and C, 7, above (pp.1,7,12), which normally do not come under its jurisdiction. Cf. Ch. V: A, 1, a, above (p. 27). Art. 41. D.L.L. 27.7.44. #159.

Comment:

1) In proceedings before the High Court of Justice against persons guilty of the above-mentioned crimes, the High Commissioner is empowered to act as attorney general in spite of the fact that these crimes do not usually fall within the jurisdiction of the High Court of Justice.

2) For specific functions of the High Commissioner before the High Court of Justice, cf. Ch. V: A, 3, above (p. 32).

c. Instances in which the High Commissioner may exercise functions of attorney general concurrently with or to the exclusion of regular attorneys general before courts other than the High Court of Justice.

i. Initiation of istruzione: The High Commissioner may also, with the magistrates or expert lawyers in his office, proceed with the istruzione for persons accused of crimes described in Ch. I: A, 2-4, above (pp. 2-3), which do not fall within the jurisdiction of the High Court of Justice. He may then ask the court having jurisdiction to try the accused, or he may request the court to cancel the proceedings. Art. 41. D.L.L. 27.7.44. as amended by Art. 3. D.L.L. 3.5.45. #196.

Comment: In this connection, it is significant that although the High Commissioner is empowered to exercise some of the functions of attorney general, he does so concurrently with the attorneys general who are regularly entrusted with the prosecutions in the above-mentioned courts.

ii, High Commissioner's authority to institute proceedings to review judgments: The High Commissioner has authority to institute proceedings to review interlocutory judgments, quashing proceedings against the accused at the termination of the istruzione or judgments rendered at the close of the trial for crimes mentioned in Ch. I: A, 2-4 and B, above (pp.2,3,7). The High Commissioner may exercise this function 1) regardless of the conclusions reached by the regular attorney general and 2) in addition to proceedings for review instituted by the latter. The High Commissioner, however, must institute proceedings for review within thirty days after receiving notice of the judgment from the clerk's office of the court. Art. 1. D.L.L. 3.5.45. #196.

Comment: The High Commissioner, however, has no authority to institute proceedings to review judgments passed by the Extraordinary Courts of Assizes. Art. 1. D.L.L. 3.5.45. #196.

iii. High Commissioner's authority to reopen the istruzione when proceedings were quashed for lack of sufficient evidence: In prosecutions for crimes mentioned in Ch. I: A, 2-4 and B, above (pp.2,3,7), if new evidence is discovered following the quashing of proceedings against the accused at the close of the istruzione, the High Commissioner may have the istruzione reopened in accordance with the provisions of Articles 402 and 404 of the 1931 C.P.P. Art. 2. D.L.L. 3.5.45. #196.

Comment: It is doubtful, however, whether the High Commissioner has such authority in proceedings before the Extraordinary Courts of Assizes.

d. Authority to propose revocation of pardons: The High Commissioner may propose the revocation of pardons granted to Fascist criminals. Cf. Ch. III: A, above (p. 79). Art. 6. D.L.L. 27.7.44. #159.

C. Assistant High Commissioners.

1. Appointment: The four Assistant High Commissioners, one for each branch of defascistization (punishment of Fascist crimes, epuration of the administration, forfeiture to the State of individual "profits of the regime," and the liquidation of Fascist property) are appointed by the President of the Council of Ministers. Art. 40. D.L.L. 27.7.44. #159 as amended by Art. 1. D.L.L. 4.1.45. #2; Art. 1. D.L.L. 3.10.44. #238.

2. Functions of the Assistant High Commissioners.

a. In general: The Assistant High Commissioners, in their respective fields, assist the High Commissioner in applying the sanctions against Fascism. Art. 40. D.L.L. 4.1.45. #2.

b. As substitutes for the High Commissioner: If the High Commissioner's post is vacant or the High Commissioner is absent, the four Assistant High Commissioners, under the chairmanship of the President of the Council of Ministers, exercise jointly the functions of the High Commissioner. Art. 1. D.L.L. 4.1.45. #2.

D. Vice Assistant High Commissioners.

1. Appointment. Four vice Assistant High Commissioners, one for each branch of defascistization, are appointed by the President of the Council of Ministers. Art. 40. D.L.L.

27.7.44, as amended by Art. 2. D.L.L. 3.10.44. #238 and Art. 1. D.L.L. 4.1.45. #2.

2. Functions. The vice Assistant Commissioners, like the Assistant High Commissioner, assist the High Commissioner for Sanctions against Fascism in applying the sanctions against Fascism in their respective branches. Art. 40. D.L.L. 27.7.44. #159 as amended by Art. 1. D.L.L. 4.1.45. #2.

E. Office of the Secretary.

The Office of the Secretary is administered by a Secretary General and may include personnel not regularly employed by the Government. Art. 40. D.L.L. 27.7.44. #159 as amended by Art. 5. D.L.L. 3.10.44 and Art. 1. D.L.L. 4.1.45. #2.

F. Magistrates and other functionaries of the Office of the High Commissioner.

Magistrates and other functionaries may, at the request of the High Commissioner, be assigned to his office in adequate numbers to ensure its regular functioning. Art. 40. D.L.L. 27.7.44. #159 as amended by Art. 3. D.L.L. 3.10.44. #238 and Art. 1. D.L.L. 4.1.45. #2.

The lawyers who act as the High Commissioner's delegates in instituting proceedings for the punishment of crimes falling within the jurisdiction of Courts other than the High Court of Justice are appointed by the local Bar Commissions from lists drawn up by the said commissions. Each list will include the names of not more than ten lawyers. Art. 3. D.L.L. 3.5.45. #196.

G. Police Force at the disposal of the High Commissioner's Office.

A number of judiciary police, composed of members of the carabinieri (State police), police agents ("pubblica sicurezza"), and treasury guards, are placed at the disposal of the office of the High Commissioner. The High Commissioner, or his delegates, may request the assistance of the judiciary police

officers who are required to carry out their orders. Art. 40. D.L.L. 27.7.44 as amended by Art. 3. D.L.L. 3.10.44. #238; Art. 1. D.L.L. 4.1.45. #2.

H. Other Employees of the High Commissioner's Office.

The High Commissioner has authority to hire other personnel (in numbers not exceeding one hundred and twenty) according to the needs of his office pursuant to the provisions of R.D.L. 4.2.37. #100. Art. 6. D.L.L. 3.10.44. #238.

VII. GENERAL AND TRANSITORY PROVISIONS

A. Applicable to Crimes or ~~Quasi-Offenses~~ Described in Ch. I: A, 1-6, B, and C, 7-8, above.

1. Provisions concerning proceedings initiated prior to 27 July 1944 for the punishment of Fascist crimes. Proceedings instituted pursuant to the provisions of laws subsequently repealed are continued in accordance with the provisions of the new laws. Sentences passed pursuant to the former laws will not be vacated unless inconsistent with the current laws. Art. 44. D.L.L. 27.7.44. #159.

2. Provisions concerning the punishment of defascistization officials guilty of certain crimes. Government officials entrusted with the application of sanctions against Fascism who commit any of the crimes specified in Arts. 314, 316-320, 323, 324, 326, and 328 of the 1931 Penal Code, shall incur the punishments provided therein augmented by one-third to one-half. Art. 43. D.L.L. 27.7.44. #159.

B. Applicable to Crimes Described in Ch. I: C, 1-6, above.

1. Provisions for the punishment of persons who aid and abet those guilty of the crimes mentioned in Ch. I: C, 1-6, above. Whoever assists persons guilty of any of the crimes described in Ch. I: C, 1-6, above (pp.10-12), by giving them asylum, helping them to evade investigations or avoid arrest, or by helping them to prevent execution of the sentence, and whoever destroys or conceals the evidence of the crime, shall be punished with one to five years imprisonment. Art. 6. D.L.L. 26.4.45. #195.

2. Provisions concerning relatives of persons guilty of the crimes described in Ch. I: C, 1-6, above. The punishments prescribed under 1, above, do not apply to persons who give assistance to save one of the following relatives:

1) ascendant; 2) descendant; 3) spouse; 4) brother or sister; 5) uncle (or aunt); 6) nephew (or niece); 7) a relation by marriage in the second degree (provided the spouse is deceased and there is no issue). Art. 6. 26.4.45. #195.

C. Applicable to all Crimes or Quasi-Offenses.

The provisions of the 1931 C.P.P. are applicable to the crimes described in Ch. I: A, B, and C, 7-8, if pertinent and not inconsistent with procedural rules as set forth in this report. Art. 10. D.L.L. 27.7.44. #159. It is implied that the above provisions are also applicable, if pertinent, to the other crimes mentioned in this report (cf. Ch. I: C, 1-6).

BIBLIOGRAPHY AND SOURCE MATERIAL

Battaglini, Giulio: Diritto Penale (1937).

Battista, Michele: Codice Penale, Codice di Procedura Penale (1931).

Bruno, A: Codice di Procedura Penale (1915).

Carletti, Tito and Cogliolo, Pietro: Codice Penale (1902).

Cassiano, Alberto: Elementi di diritto processuale penale (1933).

Castellano, Giorgio: Codice di Procedura penale (1933).

Codice Penale Militare di Guerra, published in the Gazzetta Ufficiale (ordinary supplement) #107, 6 May 1941 - XIX.

Codice Penale Militare di Pace, published in the Gazzetta Ufficiale, (ordinary supplement) #107, 6 May 1941 - XIX.

d'Amelio, Mariano: Nuovo Digesto Italiano (1939), Vols. III, IX, XV.

Di Martino, Umberto: Commento al Nuovo Codice di Procedura Penale (1932).

Enciclopedia Italiana, Vols. XI, XVII.

Franchi, L: Leggi Usuali d'Italia (8th edition), (1939).

"Treatment of Former Fascists by the Italian Government," R&A Report No. 2688, 17 March 1945.

R.D.L. 27.10.27 #1983 published in the Gazzetta Ufficiale #253 2.11.27.

R.D. 18.6.31 #773 published in Leggi Usuali (1939).

R.D.L. 6.12.43 #22/B published in the Gazzetta Ufficiale #4/B 8.12.43.

R.D.L. 20.1.44 #45 published in the Gazzetta Ufficiale #8 19.2.44.

R.D.L. 26.5.44 #134 published in the Gazzetta Ufficiale #32 31.5.44.

D.L.L. 27.7.44 #159 published in the Gazzetta Ufficiale #41 29.7.44.

D.L.L. 6.8.44 #170 published in the Gazzetta Ufficiale #47 18.8.44.

D.L.L. 10.8.44 #224 published in the Gazzetta Ufficiale #64 5.10.44.

D.L.L. 13.9.44 #198 published in the Gazzetta Ufficiale #55 14.9.44.

D.L.L. 14.9.44 #288 published in the Gazzetta Ufficiale #79 9.11.44.

D.L.L. 3.10.44 #238 published in the Gazzetta Ufficiale #67 12.10.44.

D.L.L. 5.10.44 #229 published in the Gazzetta Ufficiale #65 7.10.44.

D.L.L. 5.10.44 #249 published in the Gazzetta Ufficiale #70 18.10.44

D.L.L. 5.10.44 #290 published in the Gazzetta Ufficiale #79 9.11.44.

D.L.L.	8.12.44	#406	published in the Gazzetta Ufficiale	#4	9.1.45.
D.L.L.	10.12.44	#419	published in the Gazzetta Ufficiale	#7	16.1.45.
D.L.L.	28.12.44	#429	published in the Gazzetta Ufficiale	#11	25.1.45.
D.L.L.	4.1.45	#2	published in the Gazzetta Ufficiale	#4	9.1.45.
D.P.C.M.	2.2.45		published in the Gazzetta Ufficiale	#20	15.2.45.
D.L.L.	22.4.45	#142	published in the Gazzetta Ufficiale	#49	24.4.45.
D.L.L.	26.4.45	#149	published in the Gazzetta Ufficiale	#51	28.4.45.
D.L.L.	26.4.45	#195	published in the Gazzetta Ufficiale	#58	15.5.45.
D.L.L.	26.4.45	#197	published in the Gazzetta Ufficiale	#58	15.5.45.
D.L.L.	3.5.45	#196	published in the Gazzetta Ufficiale	#58	15.5.45.
D.L.L.	10.5.45	#234	published in the Gazzetta Ufficiale	#62	24.5.45.
D.L.	11.5.45	#186	published in the Gazzetta Ufficiale	#57	12.5.45.